

2603
No. 12378

United States
Court of Appeals
For the Ninth Circuit.

LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL, and Its Agent Lloyd A. Mashburn; MILLWRIGHT AND MACHINERY ERECTORS, LOCAL 1607. OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L., and Its Agent Herman Barbaglia,
Appellants.

vs.

HOWARD F. LEBARON, Regional Director of the Twenty-first Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board,
Appellee.

Transcript of Record

Appeal from the United States District Court
Southern District of California
Central Division.

FILED
JAN 4 - 1950

PAUL P. O'BRIEN,

No. 12378

United States
Court of Appeals

For the Ninth Circuit.

LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL, and Its Agent Lloyd A. Mashburn; MILLWRIGHT AND MACHINERY ERECTORS, LOCAL 1607, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L., and Its Agent Herman Barbaglia,

Appellants,

vs.

HOWARD F. LEBARON, Regional Director of the Twenty-first Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board,

Appellee.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court for the
Southern District of California, Central Division

No. 9629-Y

HOWARD F. LEBARON, Regional Director of the
Twenty-first Region of the National Labor Re-
lations Board, for and on Behalf of the Na-
tional Labor Relations Board,

Petitioner,

vs.

LOS ANGELES BUILDING AND CONSTRU-
TION TRADES COUNCIL; and Its Agent
LLOYD A. MASHBURN; MILLWRIGHT
AND MACHINERY ERECTORS, LOCAL
1607, OF UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMER-
ICA, A.F.L.; and Its Agent HERMAN BAR-
BAGLIA,

Respondents.

PETITION FOR AN INJUNCTION UNDER
SECTION 10 (1) OF THE NATIONAL
LABOR RELATIONS ACT, AS AMENDED

To the Honorable District Judge of the United
States District Court, for the Southern District
of California, Central Division:

Comes now Howard F. LeBaron, Regional Direc-
tor of the Twenty-first Region of the National Labor
Relations Board (herein called the Board), and
petitions this Court on behalf of the Board, pur-
suant to Section 10 (1) of the National Labor Rela-

tions Act, as amended June 23, 1947 (61 Stat. 136 et seq.; 29 U.S.C. Supp. I. Sec. 141 et seq.), herein called the Act, for appropriate [2*] injunctive relief pending the final adjudication of the Board with respect to the matter pending before the Board on charges alleging that respondents have engaged in and are engaging in violations of Sections 8 (b), subsection (4)(D) of the Act. In support thereof petitioner respectfully shows as follows:

1. Petitioner is Regional Director of the Twenty-first Region of the Board, an agency of the United States Government, and files this petition for and on behalf of the Board.

2. Respondent Los Angeles Building and Construction Trades Council (herein called Council), an unincorporated association composed of eighteen (18) labor organizations engaged in the building trades industry, is a labor organization within the meaning of Section 2 (5) and 10 (1) of the Act, and is engaged within this judicial district in promoting and protecting the interests of its constituent unions and their employee members.

3. Respondent Lloyd A. Mashburn is, and at all times material herein has been, an agent of respondent Council engaged within this judicial district in promoting and protecting the interests of respondent Council's constituent unions and their employee members.

4. Respondent Millwright and Machinery Erectors, Local 1607, of the United Brotherhood of Car-

* Page numbering appearing at foot of page of Certified Transcript of Record.

penters and Joiners of America, A.F.L. (herein called Millwrights), an unincorporated association and a constituent union of respondent Council, is a labor organization within the meaning of Sections 2 (5) and 10 (1) of the Act, and is engaged within this judicial district in promoting and protecting the interests of its employee members.

5. Respondent Herman Barbaglia is, and at all times material herein has been, an agent of respondent Millwrights engaged within this judicial district in promoting and protecting the interests of respondent Millwrights' employee members.

6. Jurisdiction of this proceeding is conferred upon the Court by Section 10 (1) of the Act.

7. On or about April 15, 1949, Local Lodge 1235 of the International Association of Machinists (herein called Machinists), an independent labor organization, pursuant to the provisions of the Act filed a second amended [3] charge with the Board to a charge filed originally on February 2, 1949, and amended on March 8, 1949, said second amended charge alleging that respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b), subsection (4)(D) of the Act. Copies of said charge and amended charges are attached hereto as Exhibits 1, 2 and 3 and made a part hereof. Affidavit of service of said second amended charge is attached hereto as Exhibit 4 and made a part hereof.

8. The said charge and amended charges were referred to your petitioner as the Regional Director

for the Twenty-first Region of the Board for investigation. Petitioner has investigated the aforesaid charges.

9. After such investigation, petitioner has reasonable cause to believe that the said second amended charge is true and that a complaint of the Board based thereon should issue against the respondents pursuant to Section 10 (b) of the Act. More particularly, and upon the basis of such investigation and of the evidence disclosed as a result thereof, petitioner has reasonable cause to believe and believes that respondents have engaged in conduct in violation of Section 8 (b), subsection (4)(D) of the Act, and affecting commerce within the meaning of Section 2, subsections (6) and (7) of the Act, as follows:

(a) Southern California Edison Company (herein called Edison), a California corporation, is a public utility engaged in furnishing electrical energy and services to the Los Angeles and Southern California area. Approximately 39 per cent of its total output of electrical energy goes to instrumentalities of interstate commerce and concerns engaged in interstate commerce, such as oil refineries, rubber companies, steel plants and aircraft manufacturers. In the operation of its business, Edison during the past year purchased raw materials of a value in excess of \$3,400,000, of which approximately $66\frac{2}{3}$ per cent originated from outside of the State of California. During the past year approximately $25\frac{1}{2}$ per cent of the total power utilized

by Edison originated from outside the State of California.

(b) Stone and Webster Engineering Corporation (herein called Stone [4] and Webster), a Massachusetts corporation, is a general contractor engaged in the construction business. It is engaged mainly in industrial and commercial construction work such as the construction of steam generator plants, transmission lines, refinery work, manufacturing plants and paper mills. Its construction activities extend to every State in the United States and to many foreign countries. At the end of 1948 its construction then in progress was of an estimated completed value of one-third billion dollars. As appears in affidavit of William L. Sheets, attached hereto as Exhibit 5 and made a part hereof.

(c) Westinghouse Electric Corporation (herein called Westinghouse), a Pennsylvania corporation with its principal office at Pittsburgh, Pennsylvania, and plants throughout the United States, is engaged in the manufacture, sale and installation of electrical supplies and equipment.

In the operation of its plant located at East Pittsburgh, Pennsylvania, it manufactures electrical apparatus, including motors, switch-gear, generators, circuit breakers, lightning arresters, control apparatus and renewal parts. Westinghouse, during the past year, purchased raw materials for use in said plant of a value in excess of \$1,000,000, of which approximately 50 per cent originated from outside of the State of Pennsylvania. During the

same period Westinghouse received over \$1,000,000 from the sale of electrical apparatus manufactured at said plant of which approximately 90 per cent was sold to customers outside the State of Pennsylvania.

In the operation of its plant located at Lester, State of Pennsylvania, it manufacturers steam turbines, reduction gears, steam condensers, and other auxiliary apparatus for industrial and central station plants and ship propulsion. Westinghouse, during the past year, purchased raw materials for use in said plant of a value in excess of \$1,000,000, of which approximately 50 per cent originated from outside the State of Pennsylvania. During the same period Westinghouse received over \$1,000,000 from the sale of products manufactured at said plant, approximately 50 per cent of which was sold to customers outside the State of Pennsylvania. As appears in Affidavit of William L. Budge, attached hereto as Exhibit 6 and made a part hereof.

(d) Machinists, an unincorporated association, is a labor [5] organization within the meaning of Section 2 (5) of the Act, and is engaged in promoting and protecting the interests of its employee members within this judicial district. It is an independent labor organization and is not affiliated with respondent Council.

(e) Edison is now engaged in the construction and equipment of a new steam turbine electric power generating station at Redondo Beach, California, the construction of which was begun in July, 1946,

and the estimated completed cost of which is in excess of \$38,000,000. Approximately \$18,500,000 of such cost represents the purchase value of equipment of which approximately \$12,700,000 in value has been or will be transported from outside the State of California directly to the job site. At the present time construction of the station is approximately 75 per cent completed and the units now in operation at the station furnish approximately 15 per cent of Edison's total output of electrical energy. As partly appears in Exhibit 5 attached.

(f) Stone and Webster has the general contract for the construction of the Redondo Beach station and for the past several months it has had approximately 550 of its own employees working on the project. In addition, numerous employees of various subcontractors have been engaged on the construction project. Among these employees are members of substantially all the building trades unions affiliated with respondent Council. As appears in Exhibit 5 attached.

(g) Some time prior to December, 1948, Edison entered into arrangements with Westinghouse for the latter to furnish and install several steam turbine generators at the Redondo Beach station. These turbine generators, of a total value of approximately \$4,800,000, were manufactured by Westinghouse at its plants at Lester and East Pittsburgh, Pennsylvania, from whence they were shipped to California for installation. On or about January 31, 1949, Westinghouse began the installation of one of the

turbine generators, a 6,000 kilowatt unit, pursuant to its contract with Edison. To make the installation it used, inter alia, employees who were members of the Machinists. As partly appears in Exhibit 6 attached.

(h) On or about February 2, 1949, respondents, in violation of [6] Section 8 (b) (4) (D), engaged in, and by orders, directions and instructions induced and encouraged the employees of Stone and Webster, Westinghouse and other employers on the Redondo Beach station project to engage in, a strike or concerted refusal in the course of their employment to transport or otherwise handle or work on Westinghouse products or to perform services for their employers in connection with the Redondo Beach project, an object thereof being to force or require Westinghouse and/or Stone and Webster to assign the work of installing the steam turbine generators at the Redondo Beach station to members of respondent Millwrights rather than to the employees of Westinghouse who are now members of the Machinists. As appears in Affidavits of Floyd E. Smith and Louis Merritt, attached hereto as Exhibits 7 and 8 and made a part hereof.

(i) On or about March 29, 1949, Westinghouse began the unloading of another turbine generator, a 60,000 kilowatt unit shipped from its plant at Lester, Pennsylvania to California for installation by its employees who are members of Machinists at the Redondo Beach station, using in the unloading operations riggers who are members of the Interna-

tional Association of Bridge, Structural and Ornamental Iron Workers, Local No. 433, a constituent union of respondent Council. As partly appears in Exhibit 6 attached.

(j) On or about April 11, 1949, respondents engaged in, and by orders, directions and instructions induced and encouraged the riggers employed by Westinghouse in the above referred to unloading operations to engage in, a strike or concerted refusal in the course of their employment to transport or otherwise handle or work on Westinghouse products or to perform services for their employer in connection with the Redondo Beach project, an object thereof being to force or require Westinghouse and/or Stone and Webster to assign the work of installing the steam turbine generators at the Redondo Beach station to members of respondent Millwrights rather than to the employees of Westinghouse who now are members of the Machinists. As appears in Exhibit 6, attached.

10. For some time past a critical electrical power shortage has existed in Southern California due to the inadequate supply of water for the generation of power and the increased demand for electrical power caused by the growth of population and the expansion of industry in the area. The Redondo Beach station is planned to alleviate this shortage by providing for the generation of electric energy by steam and by increasing Edison's electric power production capacity by about 30 per cent. Of six (6) turbine generators to be installed at the Re-

dondo Beach station, only three (3), or half of them, have been placed in operation. The conduct of respondents set forth above has completely halted, since about February 2, 1949, the installation of the remaining three (3) generators.

11. It may be fairly anticipated that unless enjoined respondents will repeat and continue their course of conduct described above and engage in, and induce and encourage the employees of Stone and Webster, Westinghouse and other employers to engage in, a strike or a concerted refusal in the course of their employment to handle or work on Westinghouse products or perform services for their employers on the Redondo Beach project in order to force or require Westinghouse and/or Stone and Webster to assign the installation work on the Redondo Beach generators to members of respondent Millwrights rather than to Westinghouse's employees who are members of Machinists. Thereby irreparable injury will be done to the public interest and to the policies of the Act. To avoid such result, it is essential and appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the purpose of Section 10 (1) of the Act, that, pending final adjudication of the Board with respect to this matter, respondents, and each of them be enjoined and restrained from the commission of the acts above alleged and similar acts or repetitions thereof.

Wherefore, petitioner prays:

(1) That the Court issue a rule directing re-

spondents to appear and show cause before this Court, at a time fixed by the Court, why an injunction should not issue enjoining and restraining respondents, and each of them, their agents, servants, employees, attorneys and all parties in active concert or participation with them pending final adjudication of the Board of such matters from engaging in, or inducing or encouraging the employees of Stone and Webster, Westinghouse, or any other employers, to engage in, a strike or concerted refusal in the course of their employment to use, manufacture, process, transport [8] or otherwise handle or work on any goods, articles or materials or commodities belonging to or utilized by Stone and Webster, Westinghouse or any other employer engaged on the construction project for Edison at Redondo Beach, California, or to perform services for Stone and Webster, Westinghouse, or any other employer on said project, where and object thereof is to force or require Westinghouse and/or Stone and Webster to assign the work of installing steam turbine generators to members of respondent Millwrights rather than to employees of Westinghouse who now are members of Machinists, or any other labor organization, unless respondent Millwrights is certified by the Board as the bargaining representative for the employees performing such work.

(2) That upon the return of the rule to show cause the Court issue an order enjoining and restraining respondents, their agents, servants, employees, attorneys and all persons in active concert

or participation with them, in the manner set forth above.

(3) That the Court grant such other and further relief as may seem just and proper.

Dated at Los Angeles, California, this 3rd day of May, 1949.

/s/ HOWARD F. LeBARON,
Regional Director, Twenty-first Region, National
Labor Relations Board.

/s/ ROBERT N. DENHAM,
General Counsel,

/s/ DAVID P. FINDLING,
Associate General Counsel,

/s/ WINTHROP A. JOHNS,
Assistant General Counsel.

/s/ CHARLES K. HACKLER,
Regional Attorney,

/s/ JEROME SMITH,
Attorney, National Labor
Relations Board. [9]

EXHIBIT No. 1

Budget Bureau No. 64-R003.1

Approval Expires Nov. 30, 1949

United States of America

National Labor Relations Board

Charge Against Labor Organization or Its Agents

Case No. 21-CD-19

Date Filed 2-2-49

Compliance Status Checked by:

Important—Read Carefully

Where a Charge Is Filed by a Labor Organization, or an Individual or Group Acting on Its Behalf, a Complaint Based Upon Such Charge Will Not Be Issued Unless the Charging Party and Any National or International Labor Organization of Which It Is an Affiliate or Constituent Unit Have Complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an Original and 4 Copies of This Charge with the NLRB Regional Director for the Region in Which the Alleged Unfair Labor Practice Occurred or Is Occurring.

1. Labor Organization or Its Agents Against
Which Charge Is Brought

Los Angeles Building and Construction Trades Council and Lloyd A. Mashburn, its Agent.

538 South Maple Avenue, Los Angeles 13, California (MI 0768)

The Above-Named Organization(s) or Its Agents

Has (Have) Engaged In and Is (Are) Engaging In Unfair Labor Practices Within the Meaning of Section (8b) Subsection(s) of the National Labor Relations Act, and These Unfair Labor Practices Are Unfair Labor Practices Affecting Commerce Within the Meaning of the Act.

2. Basis of the Charge

(Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets)

From on or about January 15, 1949 to date, the above-named labor organization and its agent, Lloyd A. Mashburn, have induced and encouraged the employees of Stone and Webster Engineering Corporation, general contractors engaged in new construction work for the Southern California Edison Company at Redondo Beach, California, and have induced and encouraged employees of construction subcontractors working under Stone and Webster Engineering Corporation to engage in a strike and a concerted refusal in the course of their employment to perform any services for their employers, an object of such action being to force and require Westinghouse Electric Company and/or Stone and Webster Engineering Corporation to assign the work of installing such steam turbine on the premises being constructed to members of affiliates of United Brotherhood of Carpenters, Joiners and Helpers of America, A. F. of L., rather than to members of International Association of Machinists,

despite the fact that Westinghouse Electric Company has assigned such work and is carrying on said work by members of the International Association of Machinists.

Pursuant to said inducement and encouragement of employees, the above-named labor organization and its agent, Lloyd A. Mashburn, did call a strike of all of the members of labor organizations engaged in construction work at the Redondo Beach plant, which strike became effective on February 2, 1949 by the cessation of all work of a construction nature by members of such Los Angeles Building and Construction Trades Council, and was for the same purposes as set forth in the paragraph above.

3. Name of Employer

Westinghouse Electric Company and Stone and Webster Engineering Corporation

4. Location of Plant Involved

Redondo Beach, California

5. Nature of Employer's Business

Building construction and machinery installation

6. No. of Workers Employed

7. Full Name of Party Filing Charge

International Association of Machinists for Its Local Lodge 1235

8. Address of Party Filing Charge

904 Van Nuys Building, Los Angeles 14, California. Tel. No. MU 1396

9. Declaration

I Declare That I Have Read the Above Charge

and That the Statements Therein Are True to the Best of My Knowledge and Belief.

/s/ E. M. SKAGEN,

(Signature of representative
or person making charge)

Grand Lodge Representatives.

February 2, 1949

Wilfully False Statements on This Charge Can Be Punished by Fine and Imprisonment (U. S. Code, Title 18, Section 80) [10]

EXHIBIT No. 2

Budget Bureau No. 64-R003.1

Approval Expires Nov. 30, 1949

United States of America

National Labor Relations Board

Charge Against Labor Organization or Its Agents

Case No. 21-CD-19

Dated Filed 3-8-49

Compliance Status Checked by:

Important—Read Carefully

Where a Charge Is Filed by a Labor Organization, or an Individual or Group Acting on Its Behalf, a Complaint Based Upon Such Charge Will Not Be Issued Unless the Charging Party and Any National or International Labor Organization of Which It Is an Affiliate or Constituent Unit Have Complied

with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an Original and 4 Copies of This Charge with the NLRB Regional Director for the Region in Which the Alleged Unfair Labor Practice Occurred or Is Occurring.

1. Labor Organization or Its Agents Against Which Charge Is Brought

Los Angeles Building and Construction Trades Council and Lloyd A. Mashburn, its Agent; and United Brotherhood of Carpenters, Joiners and Helpers of America, Local No. 1607, A. F. of L. and Herman F. Barbaglia, Its Agent.

538 South Maple Avenue, Los Angeles 13, California (MI 0768)

The Above-Named Organization(s) or Its Agents Has (Have) Engaged in and Is (Are) Engaging in Unfair Labor Practices Within the Meaning of Section (8b) Subsection(s) 4 (d) of the National Labor Relations Act, and These Unfair Labor Practices Are Unfair Labor Practices Affecting Commerce Within the Meaning of the Act.

2. Basis of the Charge

(Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets)

First Amended Charge

From on or about January 15, 1949 to date, the above named labor organizations and their respective agents, Lloyd A. Mashburn and Herman F. Bar-

baglia, have induced and encouraged the employees of Stone and Webster Engineering Corporation, general contractors engaged in new construction work for the Southern California Edison Company at Redondo Beach, California and have induced and encouraged employees of construction subcontractors working under Stone and Webster Engineering Corporation to engage in a strike and a concerted refusal in the course of their employment to perform any services of their employers, an object of such action being;

(b) to force and require Westinghouse Electric Corporation and/or Stone and Webster Engineering Corporation to assign the machinist work of installing steam turbine generators on the premises being constructed to members of affiliates of United Brotherhood of Carpenters, Joiners and Helpers of America, A.F. of L., rather than to members of the International Association of Machinists, despite the fact that Westinghouse Electric Corporation has assigned such work and is carrying on said work by members of the International Association of Machinists.

Pursuant to said inducement and encouragement of employees, the above-named labor organizations and their respective agents, Lloyd A. Mashburn and Herman F. Barbaglia, did call a strike of all of the members of labor organizations engaged in construction work at the Redondo Beach plant, which strike became effective on February 2, 1949 by the

cessation of all work of a construction nature by members of such Los Angeles Building and Construction Trades Council, and was for the same purposes as set forth in paragraph marked (b) above.

3. Name of Employer

Westinghouse Electric Corporation and Stone and Webster Engineering Corporation

4. Location of Plan Involved

Redondo Beach, California

5. Nature of Employer's Business

Building construction and machinery installation

6. No. of Workers Employed

7. Full Name of Party Filing Charge

International Association of Machinists for its Local Lodge 1235

8. Address of Party Filing Charge

904 Van Nuys Building, Los Angeles 14, California. Tel. No. Mutual 1396

9. Declaration

I Declare That I Have Read the Above Charge and That the Statements Therein Are True to the Best of My Knowledge and Belief.

By /s/ E. M. SKAGEN,

(Signature of representative of
person making charge)

Grand Lodge Representative.

March 8, 1949

Wilfully False Statements on This Charge Can

Be Punished by Fine and Imprisonment (U. S. Code, Title 18, Section 80) [12]

EXHIBIT NO. 3

Budget Bureau No. 64-R003.1

Approval Expires Nov. 30, 1949

United States of America
National Labor Relations Board

Second Amended Charge Against Labor
Organization or Its Agents

Case No. 21-CD-19

Date Filed 4-15-49.

Compliance Status Checked by: RF.

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Labor organization or its agents against which charge is brought

Name: Los Angeles Building and Construction Trades Council and Lloyd A. Mashburn, its agent; and Millwright and Machine Erector Local 1607, affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL, and Herman F. Barbaglia, its Agent.

Address: 538 South Maple Avenue, Los Angeles 13, California (MI 0786).

The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section (8b) subsection 4(d) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge

(Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets.)

From on or about January 15, 1949 the above-named labor organizations and their respective agents, Lloyd A. Mashburn and Herman F. Barbaglia, have induced and encouraged the employees of Stone and Webster Engineering Corporation, general contractors engaged in constructing an electrical power plant for the Southern California Edison Company at Redondo Beach, California, the employees of construction subcontractors working

under Stone and Webster Engineering Corporation on such construction, and the employees of Westinghouse Electric Corporation to engage in a strike and a concerted refusal in the course of their employment to perform any services for their respective employers, and did engage in and call a strike of such employees, an object of such actions being to force and require Westinghouse Electric Corporation and/or Stone and Webster Engineering Corporation to assign the work of installing steam turbine generators in such power plant to members of Millwright and Machine Erector Local 1607, a labor organization affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL, rather than to members of the International Association of Machinists, another labor organization, despite the fact that Westinghouse Electric Corporation had assigned such work to members of the International Association of Machinists and was and is attempting to carry on and complete such installation work by members of the International Association of Machinists.

3. Name of Employer

Westinghouse Electric Corporation and Stone and Webster Engineering Corporation.

4. Location of Plant Involved

Redondo Beach, California.

5. Nature of Employer's Business

Building construction and machinery installation.

6. No. of Workers Employed: —.

7. Full Name of Party Filing Charge
International Association of Machinists for its
Local Lodge 1235.

8. Address of Party Filing Charge
904 Van Nuys Building, Los Angeles 14, California.
Tel. No.: Mutual 1396.

9. Declaration

I declare that I have read the above charge and that
the statements therein are true to the best of my
knowledge and belief.

By /s/ E. M. SKAGEN,

(Signature of representative
or person making charge).
Grand Lodge Representative.

April 15, 1949.

Wilfully false statements on this charge can be
punished by fine and imprisonment (U. S. Code,
Title 18, Section 80.)

EXHIBIT NO. 4

United States of America
Before The National Labor Relations Board

Case No. 21-CD-19

In the Matter of
LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL and LLOYD A. MASHBURN, its Agents, et al

and

INTERNATIONAL ASSOCIATION OF MACHINISTS for its Local Lodge 1235.

Affidavit of Service of Transmittal Letter and
Second Amended Charge.

Date of Mailing April 15, 1949.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Los Angeles Building & Construction Trades Council, A. F. of L., 536 Maple Avenue, Los Angeles, California.

Lloyd A. Mashburn, Secretary, Los Angeles Building & Construction Trades Council, A. F. of L., 536 Maple Avenue, Los Angeles, California.

Millwright & Machine Erectors Local 1607, United Brotherhood of Carpenters and Joiners of America, A. F. of L., 106 Labor Temple, 538 Maple Avenue, Los Angeles, California.

Herman Barbaglia, Millwright & Machine Erectors Local 1607, United Brotherhood of Carpenters and Joiners of America, A. F. of L., 106 Labor Temple, 538 Maple Avenue, Los Angeles, California.

/s/ MARION C. RIEMER.

Subscribed and sworn to before me this 18th day of April, 1949.

/s/ LEE SMEDLEY,
Designated Agent,
National Labor Relations
Board.

EXHIBIT NO. 5

State of California

County of Los Angeles—ss.

Affidavit of William L. Sheets

William L. Sheets, being first duly sworn, deposes and says:

I reside at 500 South Helberta Avenue, Redondo Beach, California. I am employed by Stone and Webster Engineering Corporation as superintendent of construction on the Redondo Beach steam plant being constructed for the Southern California Edison Company. I have been employed by Stone

and Webster since 1941, having served in my present capacity since September 1, 1947. I have knowledge of the general operations of Stone and Webster and a thorough understanding of its operations in connection with the construction of the Redondo Beach steam plant.

Stone and Webster Engineering Corporation, a Massachusetts corporation, is a general contractor engaged in the construction business. It is engaged mainly in industrial and commercial construction work such as the construction of steam generator plants, transmission lines, refinery work, manufacturing plants and paper mills. Its construction activities extend to every state in the United States and to many foreign countries. At the end of 1948 its construction then in progress was of an estimated completed value of one-third billion dollars.

The Redondo Beach steam plant under construction for the Southern California Edison Company by Stone and Webster as general contractor was begun in July 1946. Its estimated completed cost is in excess of \$38,000,000. Approximately \$18,500,000 of such cost represents the purchase value of equipment, of which approximately \$12,700,000 has been or will be transported from outside the State of California directly to the jobsite. At the present time construction of the plant is approximately 75% completed.

Stone and Webster has for the past several months had approximately 550 of its own employees working on the Redondo Beach steam plant project. In

addition numerous employees of various other contractors have been engaged on the project. Among these employees are members of substantially all the building trades unions affiliated with the Los Angeles Building and Construction Trades Council.

/s/ WILLIAM L. SHEETS.

Subscribed and sworn to before me this 28th day of April, 1949.

[Seal] By /s/ J. F. ESTRIDGE,

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires Oct. 27, 1951.

EXHIBIT NO. 6

Affidavit of William L. Budge

State of California

County of Los Angeles—ss.

I, William L. Budge, being first duly sworn according to law depose and say:

I reside at 3136 Eucalyptus Ave., Long Beach, California. I am employed by Westinghouse Electric Corporation, attached to its Los Angeles office, as steam service supervisor, a position I have held since January, 1946. I have been employed by Westinghouse since 1941 and have worked in both the East Pittsburgh and Lester, Pennsylvania plants of the Corporation and have full knowledge of the operations of these plants.

Westinghouse Electric Corporation, a Pennsyl-

vania corporation with its principal office at Pittsburgh, Pennsylvania and plants throughout the United States, is engaged in the manufacture, sale and installation of electrical supplies and equipment.

In the operations of its plant located at East Pittsburgh, Pennsylvania, it manufactures electrical apparatus, including motors, switchgear, generators, circuit breakers, lightning arresters, control apparatus and renewal parts. Westinghouse, during the past year, purchased raw materials for use in said plant of a value in excess of \$1,000,000, of which approximately 50% originated from outside of the State of Pennsylvania. During the same period Westinghouse received over \$1,000,000 from the sale of electrical apparatus manufactured at said plant of which approximately 90% was sold to customers outside the State of Pennsylvania.

In the operations of its plant located at Lester, State of Pennsylvania, it manufactures steam turbines, reduction gears, steam condensers and other auxiliary apparatus for industrial and central station plants and ship propulsion. Westinghouse, during the past year, purchased raw materials for use in said plant of a value in excess of \$1,000,000, of which approximately 50% originated from outside the State of Pennsylvania. During the same period Westinghouse received over \$1,000,000 from the sales of products manufactured at said plant, approximately 50% of which was sold to customers outside the State of Pennsylvania.

I am Supervisor of the installation of a 60,000 kw.

steam turbine generator at the Redondo Beach plant of the Southern California Edison Company. This steam turbine generator has been purchased by the Southern California Edison Company from the Westinghouse Electric Corporation and was manufactured in part at East Pittsburgh, Pennsylvania and in part at Lester, Pennsylvania.

On or about March 29, 1949 several railroad cars bearing parts of said steam turbine generator were spotted at Redondo. These cars carried parts of the high pressure cylinder and during the next two or three days additional cars arrived bearing parts of the low pressure cylinder, dummy rings, and miscellaneous small parts.

On or about March 30, 1949 I instructed my Field Supervisor, Mr. Scanlon, to hire iron workers, also known as riggers, to unload these cars. Thereafter to my knowledge Mr. Scanlon hired six riggers from Iron Workers Local 433 and they began to unload said equipment from the railroad cars. These iron workers continued unloading said equipment until on or about April 11, 1949.

I am informed and believe and upon information and belief aver that on or about April 11, 1949 at or about 11:30 a. m. one L. E. Johnson, Assistant Business Agent of Iron Workers Local 433, notified the job steward and the general foreman at the Redondo project of the Southern California Edison Company, in the presence of Paul D'Antone, Westinghouse Erecting and Service Engineer, that it was the wish of Local 433, its Executive Council,

and Mr. John A. Keron that all members of the Iron Workers Local withdraw from the Westinghouse job at Redondo at noon April 11, 1949. This information was transmitted by Mr. Scanlon to me.

Pursuant to this information I called Mr. John A. Keron, Business Agent of Iron Workers Local 433, and told him: "I understand there is difficulty at Redondo. Can you give me any details?"

Keron replied: "We just aren't going to work down there because we've had too much trouble on that job."

I then asked: "Can you tell me what the trouble is? I can't recall any trouble with the iron workers."

Keron replied: "If you want to know, call Mr. Leo Vie of the Building and Construction Trades Council."

I then called Mr. Vie at the office of the Building and Construction Trades Council and stated: "I understand the riggers have stopped work at Redondo. Their Business Agent told me to call you to find out why. Can you give me any information?"

Vie replied: "I certainly can. It's not our practice to work without a written contract."

I then stated: "What do you mean? A contract for this one job or a contract for this one craft?"

Vie replied: "I mean a running contract and one for all labor furnished by the Building and Construction Trades on the job."

I then asked: "Do you mean a contract like you have with the A.G.C.?"

Vie replied: "Something on that order."

I then asked: "Is that the only beef you have on the job?"

Vie replied: "Yes, that's all there is to it."

/s/ W. L. BUDGE.

Subscribed and sworn to before me this 2nd day of May 1949.

[Seal] /s/ C. E. CULVER,

Notary Public in and for the County of Los Angeles,
State of California.

My Commission Expires June 29, 1950.

EXHIBIT NO. 7

State of California

County of Los Angeles—ss.

Affidavit of Floyd E. Smith

Floyd E. Smith, being first duly sworn, deposes and says:

I reside at 2315 Adriatic, Long Beach, California. I am employed as business representative of the International Association of Machinists, Lodge 1235, representing the construction erection workers of the twelve southern counties of California.

On February 2, 1949, understanding that there was to be a strike or work stoppage by the Stone and Webster construction employees at Redondo Beach steam plant, I arrived on the job at approximately 8:00 A. M. along with Machinists Louis Merritt and Ralph Sinclair.

On arriving at job site I noticed several men standing at the truck gate where the Machinists entered the job site and several hundred standing at the employees gate in the parking lot. I recognized business agent Hap Rogers of Electricians Local 11; business agent Mercer of Laborers Local 802; "Charlie", business agent of Pipefitters Local 250; Barton, business agent of Carpenters Millwright Local 1607; John F. Condon, Carpenters business agent, and Leo Vie, an agent of the Building Trades Council of Los Angeles.

I talked to Mercer of the Laborers who said that it was impossible for him to put his members on the job, and that it was an action against Machinists Local 1235.

I talked to Rogers of the Electricians, who said that it was out of his hands doing anything or placing his members back on the job; that it was an action of the Building Trades.

I asked Barton of the Millwrights, what the trouble was, and he stated the Building Trades was taking a holiday. I stated that I had been in several of those type holidays, and he smiled and said, "Then you know what it is about."

On February 10, 1949, I received a telephone call from Mr. Budge, steam service supervisor for Westinghouse Electric Company, asking me to remove my members from the Redondo Beach steam plant, also stating that the Building Trades would come back to work as soon as the Machinists left. In checking on his statement I called the Laborers

and the Electricians and was notified that they had received telegrams from the Building Trades Council of Los Angeles, stating to have their members back to work the following morning. In the telephone conversations I talked to a man by the name of "Congo" of the Laborers and to Rogers of the Electricians.

I notified Merritt and Sinclair that the end of that shift on February 10, 1949, would be their last day on the job, and on the following morning, February 11, 1949, Merritt, Sinclair, and myself went to the Redondo Beach steam plant to pick up their tools. All of the construction workers appeared to be back on the job for the first time since February 2, 1949.

/s/ FLOYD E. SMITH.

Subscribed and sworn to before me this 26th day of April, 1949.

/s/ JEROME SMITH,
Attorney, NLRB.

EXHIBIT NO. 8

State of California
County of Los Angeles—ss.

Affidavit of Louis W. Merritt

Louis W. Merritt, being first duly sworn, deposes and says:

I reside at 3709 Gale Avenue, Long Beach, California. I am a member of the International Associa-

tion of Machinists. I first went to work on the Redondo Beach steam station project as an employee of Westinghouse Electric Corporation on January 31, 1949, for the purpose of assisting in the installation of a turbo-generator.

At approximately 10:00 a.m. on my first day of work, Herman Barbaglia, business agent for Local 1607 of the Millwrights, approached me on the job. Present were my co-worker, Ralph Sinclair, Charles Arney, assistant construction superintendent, and George Woffter, millwright foreman. Barbaglia first spoke to Arney, saying, "I have a disagreeable job this morning. I have to tell these men that they belong to the wrong union." Then he turned to me and said, "Can I see your card?" I told him my card was in my tool box but turned to Sinclair and asked him to show Barbaglia his card, which he did. Then Barbaglia produced his identification cards as a Millwright business agent and as a member of the Building Trades Council. He then said, "Don't start to work on the job. If you do, I will have to take job action."

At about 8:00 a.m. on the morning of February 2, 1949, Sinclair, Floyd Smith, business representative of Lodge 1235, I.A.M., and I approached to truck gate at the job site together. We saw thirty or forty men standing in groups about the truck gate, also 400 or 500 employees standing outside of the employees' gate not far off in the parking area. Among these groups I recognized many Stone and Webster construction employees. These groups of

men seemed to be gathered around several different parties whom I took by their dress to be business agents of the different organizations. Two business agents I recognized on the job were at the truck gate, one Carpenters' business agent—a tall, slender man dressed in a brown suit, the other a Mr. Barton, business agent for Millwrights Local 1507. I approached Barton and asked him what the trouble was. He was talking to two men that I recognized as an Electrician and a Millwright. He turned to me and said the Building Trades were declaring a holiday. Then he asked me, "Are you an Electrician?" I replied, "No, I am a Machinist, I. A. of M."

Through the rest of the day I saw either Mr. Barton or the Carpenters business agent at the gate at all times. In the seven work days which followed during the course of the strike, I observed either the Carpenters business agent or Barton or Barbaglia, both business agents for the Millwrights, present at the gate at all times. They appeared to be stopping and conversing with anybody who attempted to enter the gate. During the course of this period one or the other of these three business agents stopped all trucks as they attempted to enter the gate. Without exceptions, they turned around and left.

/s/ LOUIS W. MERRITT.

Subscribed and sworn to before me this 26th day of April, 1949.

/s/ JEROME SMITH,
Attorney, NLRB.

City of Los Angeles

County of Los Angeles—ss.

I, Howard F. LeBaron, being first duly sworn, on oath depose and say that I am Regional Director of the Twenty-first Region of the National Labor Relations Board, that I have read the foregoing petition and exhibits and know the contents thereof, and that the statements therein made as upon personal knowledge are true and those made as upon information and belief, I believe to be true.

/s/ HOWARD F. LeBARON.

Subscribed and sworn to before me this 3rd day of May, 1949.

[Seal] /s/ STELLA P. CERESKA,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Dec. 5, 1952.

[Endorsed]: Filed May 3, 1949.

[Title of District Court and Cause.]

RULE TO SHOW CAUSE

Upon petition of Howard F. LeBaron, Regional Director of the Twenty-First Region of the National Labor Relations Board, for an injunction enjoining and restraining Los Angeles Building and Construction Trades Council, Lloyd A. Mashburn, Millwright and Machinery Erectors, Local 1607, of United Brotherhood of Carpenters and Joiners of America, A.F.L., and Herman Barbaglia, respondents herein,

from engaging in certain acts in violation of the National Labor Relations Act, as amended, pending the final adjudication of said Board with respect to such matters, and good cause appearing therefor,

It Is Ordered that Los Angeles Building and Construction Trades Council, Lloyd A. Mashburn, Millwright and Machinery Erectors, Local 1607, of United Brotherhood of Carpenters and Joiners of America, A.F.L., and Herman Barbaglia, the respondents herein, appear before this Court at Los Angeles, California, on the 16th day of May, 1949, at 2:00 P. M., or as soon thereafter as counsel can be heard, and then and there show cause, if any there be, why, pending the final adjudication of the Board with respect to such matters, they and their agents, servants, employees, attorneys and all persons in active concert or participation with them, should not be enjoined and restrained as prayed in said petition.

It Is Further Ordered, that service of a copy of this rule, together with a copy of said petition upon which it is issued, be made by a United States Marshal upon Los Angeles Building and Construction Trades Council, Lloyd A. Mashburn, Millwright and Machinery Erectors, Local 1607, of United Brotherhood of Carpenters and Joiners of America, A.F.L., and Herman Barbaglia, in any manner provided in the Rules of Civil Procedure for the District Courts of the United States, or by registered mail; that similar service be made upon Local Lodge 1235 of the International Association of Machinists, the

charging party; and that proof of service be filed herein by the United States Marshal.

Issued at Los Angeles, California, this 3rd day of May, 1949.

/s/ LEON R. YANKWICH,
U. S. District Judge.

[Endorsed]: Filed May 3, 1949.

[Title of District Court and Cause.]

RESPONDENTS' RETURN TO RULE
TO SHOW CAUSE

Come now the respondents, separately and severally, and for return to the rule to show cause heretofore issued by this court and returnable at 2:00 o'clock p.m., May 16, 1949, respondents and each of them admit, deny and allege as follows:

I.

Respondents and each of them admit that petitioner is Regional Director of the Twenty-first Region of the National Labor Relations Board. Respondents and each of them have no knowledge that petitioner brings this action on behalf of the Board or that petitioner has any lawful right to institute this petition, and therefore deny the authority of petitioner to bring or prosecute this action and request strict proof thereon.

II.

Respondents and each of them admit that respondent Los Angeles Building and Construction Trades Council is an unincorporated association composed of eighteen (18) labor organizations engaged in the building trades industry, is a labor organization within the meaning of Section 2 (5) of the Act, and is engaged within this judicial district in promoting and protecting the interests of its constituent unions and their employee members.

III.

Respondents and each of them further admit that Lloyd A. Mashburn is and at all times material herein has been an agent of respondent Los Angeles Building and Construction Trades Council, engaged within this judicial district in promoting and protecting the interests of the respondent Council's constituent unions and their employee members.

IV.

Respondents and each of them admit that Millwright and Machinery Erectors, Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A. F. of L., is an unincorporated association and a constituent union of respondent Council, is a labor organization within the meaning of Section 2 (5) of the Act, and is engaged within this judicial district in promoting and protecting the interests of its employee members.

V.

Respondents and each of them admit that Herman Barbaglia is and at all times material herein has been an agent of respondent Millwright and Machinery Erectors, Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A. F. of L., engaged within this judicial district in promoting and protecting the interests of respondent Millwrights' employee members.

VI.

Respondents and each of them deny that jurisdiction is conferred upon this court by Section 10 (1) of the Act, or any other section of the Act.

VII.

Respondents and each of them admit that on or about April 15, 1949, the International Association of Machinists on behalf of its Local Lodge 1235 filed a second amended charge with petitioner, and that the original charge was filed on February 2, 1949, with petitioner and amended on March 8, 1949, alleging that certain acts were unfair labor practices within the meaning of Section 8 (b), subsection (4) (D) of the Act, but respondents and each of them deny that such allegations amounted to unfair labor practices under Section 8 (b), subsection (4) (D) of the Act. Further respondents and each of them allege and show that at the time the International Association of Machinists on behalf of its Local Lodge 1235 filed the charges herein mentioned,

the International Association of Machinists on behalf of its Local Lodge 125 had also filed at the same time charges alleged to have arisen out of the same acts, and charged that said acts constituted further unfair labor practices within the meaning of Section 8 (b), subsection (4) (A) of the Act, and on information and belief, and believing it to be true, respondents and each of them further allege and show that petitioner investigated said charges upon the unfair labor practices alleged to be under Section 8 (b), subsection (4) (A), and that said petitioner has been unable to find that said charges have merit and that said petitioner has taken no affirmative action as required by Section 10 (1) of the Act pursuant to the said charges under Section 8 (b), subsection (4) (A), and that no action will be taken thereon by petitioner for the reason that the acts complained of do not amount to unfair labor practices within the meaning of the Labor Management Relations Act of 1947.

VIII.

Respondents and each of them have no knowledge that the charge and amended charges upon which these proceedings purportedly rest were referred to the petitioner as Regional Director of the Twenty-first Region for investigation, or that petitioner has investigated the aforesaid charges according to law, and therefore deny the allegations of Paragraph 8 of the petition completely and request strict proof thereon.

IX.

Respondents and each of them deny that petitioner has reasonable cause to believe that the second amended charge is true and that a complaint thereon should issue against respondents pursuant to Section 10 (b) of the Act. Respondents and each of them further deny and show that the alleged investigation and the alleged evidence disclosed as a result thereof was not sufficient in law or in fact to give petitioner reasonable cause to believe that respondents or any of them had engaged in conduct in violation of Section 8 (b), subsection (4) (D), or any other section of the Labor Management Relations Act of 1947.

Respondents and each of them separately and severally deny all of the material allegations contained in subparagraph (a) of Paragraph 9 of the petition.

Respondents and each of them separately and severally deny all of the material allegations contained in subparagraph (b) of Paragraph 9 of the petition.

Respondents and each of them separately and severally deny all of the material allegations contained in subparagraph (c) of Paragraph 9 of the petition.

Respondents and each of them admit that the International Association of Machinists and its Local Lodge 1235 are each unincorporated associations and are labor organizations within the mean-

ing of Section 2 (5) of the Act, and are engaged in promoting and protecting the interests of their employee members within this judicial district, and that neither of them are affiliated with respondent Los Angeles Building and Construction Trades Council.

Respondents and each of them separately and severally deny all of the material allegations contained in subparagraph (e) of Paragraph 9 of the petition.

Respondents and each of them separately and severally deny all of the material allegations contained in subparagraph (f) of Paragraph 9 of the petition.

Respondents and each of them separately and severally deny all of the material allegations contained in subparagraph (g) of Paragraph 9 of the petition.

With respect to subparagraph (h) of Paragraph 9 of the petition, Respondents and each of them deny that they or any of them in violation of Section 8 (b) (4) (D), or any other section of the Act, engaged in and by orders, directions, and instructions induced and encouraged the employees of Stone and Webster Engineering Corporation, Westinghouse Electric Corporation, and other employers at the Redondo Beach Station project mentioned in the petition to engage in a strike or a concerted refusal in the course of their employment to transport or otherwise handle or work on Westinghouse products or to perform services for their

employers in connection with the Redondo Beach Station project, an object thereof being to force or require Westinghouse and/or Stone and Webster to assign the work of installing the steam turbine generator at the Redondo Beach Station project to members of respondent Millwrights rather than to employees of Westinghouse who are now members of the Machinists. Respondents and each of them allege and show that on February 2, 1949, the members of Los Angeles Building and Construction Trades Council, including Millwright and Machinery Erectors, Local 1607, did engage in concerted activities pursuant to the guarantee in Section 7 of the Act, and engaged in a concerted protest of the illegal conduct and arrangement and the unfair labor practices being then committed jointly by the International Association of Machinists and its Local Lodge 1235 and Westinghouse Electric Corporation, and that at said time and place the International Association of Machinists and its Local Lodge 1235 and Westinghouse Electric Corporation were circumventing and seeking to circumvent the statutory prohibitions of Sections 8 (a) (1), 8 (a) (3), 8 (b) (1) and 8 (b) (2), in that International Association of Machinists and its Local Lodge 1235 and Westinghouse Electric Corporation had and were enforcing an arrangement to require certain alleged persons seeking employment with Westinghouse Electric Corporation to be hired through the International Association of Machinists and its Local Lodge 1235 and to be and remain members

of that local as a condition of employment and as a condition of continued employment at a time when neither the International Association of Machinists nor its Local Lodge 1235 had been certified by the National Labor Relations Board as being authorized to make such an arrangement or agreement, and that such arrangement or agreement constitutes unfair labor practices within the meaning of Section 8, subsections (a) (1) and (a) (3), (b) (1) and (b) (2) of the Act, as more fully appears by the exhibits attached to and made a part of the affidavit of Lloyd A. Mashburn, which in turn is attached hereto and made a part hereof.

Respondents and each of them separately and severally deny all of the material allegations contained in subparagraph (i) of Paragraph 9 of the petition.

With respect to subparagraph (j) of Paragraph 9 of the petition, respondents and each of them deny that on April 11, 1949, respondents or any of them engaged in and by orders, directions and instructions induced and encouraged the riggers employed by Westinghouse Electric Corporation at the Redondo Beach Station project aforesaid to engage in a strike or concerted refusal in the course of their employment to transport or otherwise handle or work on Westinghouse products or to perform services for their employer in connection with the Redondo Beach Station project, an object thereof being to force or require Westinghouse and/or Stone and Webster to assign the work of installing the steam

turbine generator at the Redondo Beach Station project to members of respondent Millwright and Machinery Erectors, Local 1607, rather than to employees of Westinghouse who are now members of the Machinists.

Respondents and each of them allege that on or about April 11, 1949 the riggers employed by Westinghouse withheld their services for the reason that they were attempting to obtain a collective bargaining contract for their services at Westinghouse Electric Corporation, as more fully appears by the affidavit of Mr. William L. Budge, attached to the petition herein, and for the further reason that the Los Angeles Building and Construction Trades Council and its constituent members were engaging in concerted activities pursuant to the guarantee in Section 7 of the Act and had engaged in a concerted protest of the illegal conduct and arrangement and the unfair labor practices being committed jointly by International Association of Machinists and its Local Lodge 1235 and Westinghouse Electric Corporation, and at that said time and place International Association of Machinists and its Local Lodge 1235 and Westinghouse Electric Corporation were circumventing and seeking to circumvent the statutory prohibitions of Section 8, subsections (a) (1) and (a) (3), (b) (1) and (b) (2) of the Act, and that International Association of Machinists and its Local Lodge 1235 and Westinghouse Electric Corporation had and were enforcing an arrangement or agreement to require certain persons

seeking employment by Westinghouse Electric Corporation to be hired through the International Association of Machinists or its Local Lodge 1235 and to be members and remain members of that local as a condition of employment and as a condition of continued employment at a time when neither International Association of Machinists nor its Local Lodge 1235 had been certified by the National Labor Relations Board as being authorized to make such an arrangement or agreement, and that such arrangement or agreement constituted unfair labor practices within the meaning of Section 8, subsections (a) (1), (a) (3), (b) (1) and (b) (2) of the Labor Management Relations Act of 1947, as more fully appears by the affidavit of Lloyd A. Mashburn attached hereto and made a part hereof.

X.

Respondents and each of them deny specifically and generally all of the allegations in Paragraph 10 of the petition, particularly with respect to the allegation that a critical electrical power shortage in Southern California existed.

XI.

Respondents and each of them deny that there are any grounds for anticipation and that there is no showing of any threats or evidence that conduct offensive to Section 8, subsection (b) (4) (D) has been committed or will continue, but alleges that the protestations of the unfair labor practices com-

mitted and being committed by International Association of Machinists and its Local Lodge 1235 and Westinghouse Electric Corporation, as heretofore alleged, will be made, but the form thereof is not now known or determined.

XII.

Respondents and each of them allege that the Labor Management Relations Act of 1947 does not confer jurisdiction upon the Board to hear and determine matters such as are presented by this case and hence this court has no jurisdiction to entertain these proceedings. That the "dispute" which allegedly gave rise to the filing of the charges upon which these proceedings rest arose out of a building enterprise purely local in nature and character, and not one contributing to the flow of interstate commerce. That the installation of machinery is but an incident of building and construction and is as much an integral part of the building as any of the other structural developments. That upon installation of such machinery such machinery becomes static and immovable and composes fixed parts of such structure.

XIII.

Respondents and each of them further allege and show that Section 8 (b), subsection (4) (D) of the Act is in violation of the First, Fifth and Thirteenth Amendments of the Constitution of the United States and is therefore void and of no effect

in that it denies the freedom of speech and assembly, takes property without due process of law, and compels involuntary servitude.

Wherefore, respondents and each of them pray that the rule to show cause herein be discharged and that no other order be entered in this matter.

/s/ ARTHUR GARRETT,

Attorney for Respondents.

VERIFICATION

State of California

County of Los Angeles—ss.

Lloyd A. Mashburn, being first duly sworn upon his oath, deposes and says:

That he is one of the respondents in the foregoing action, that he has read the attached return to the rule to show cause and the exhibits thereto, and knows the contents thereof, and that the statements made therein upon his personal knowledge are true, except as to those matters made upon information and belief, and as to those matters he believes them to be true.

/s/ LLOYD A. MASHBURN.

Subscribed and sworn to before me this 13th day of May, 1949.

[Seal] /s/ ELIZABETH B. DODGE,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed May 16, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF LLOYD A. MASHBURN IN
OPPOSITION TO RULE TO SHOW
CAUSE

State of California

County of Los Angeles—ss.

Lloyd A. Mashburn, being first duly sworn, deposes and says:

That he is a respondent in this action and is now and at all times mentioned in the petition herein was an officer, to-wit, Secretary-Treasurer, of respondent Los Angeles Building and Construction Trades Council, hereinafter referred to as the Council. That respondent Millwright and Machinery Erectors, Local 1607, of United Brotherhood of Carpenters and Joiners of America, A.F.L., hereinafter referred to as Local 1607, is now and was at all times [37] mentioned in the petition herein an affiliate of the Council. That both the Council and Local 1607 are labor organizations within the meaning of the National Labor Relations Act, the former being a delegate organization having district jurisdiction over the building and construction trades in Los Angeles County under the American Federation of Labor, and the latter being a membership organization composed of journeymen skilled in the execution of millwright work, that is, the setting, erection, assembling and alignment of machinery. That concurrently with the filing of the original charge herein the charging party herein filed with the petitioner herein a

charge against said respondent Council and this respondent of violation of Section 8 (b) (4) (A) of the Act, based upon the same facts as the charge and first amended and second amended charges relied upon by petitioner herein, and that the petitioner has never proceeded with said charge of violation of Section 8 (b) (4) (A), nor issued any complaint thereon, nor sought any injunctive relief thereon, nor is petitioner herein relying upon said charge, a copy of said charge being hereto attached, marked Exhibit "A," and made a part hereof.

That the dispute herein concerns wages, hours, working conditions, and representation of labor, and that the provisions of the Norris-La Guardia Act deprive this court of jurisdiction to issue any injunction herein.

That Section 10 (1) of the Act, under which petitioner proposes this court grant injunctive relief, was added to the National Labor Relations Act by the Taft-Hartley amendments of 1947 and expressly suspends the provisions of the Norris-LaGuardia Act to permit the issuance of injunctions by this court on charges of violation of Sections 8 (b) (4) (A), (B), and (C) of the Act as amended. The only language in said section 10 (1) having application to the petition herein is as follows:

"In situations where such relief is appropriate [38] the procedure specified herein shall apply to charges with respect to Section 8 (b) (4) (D)."

That said section last mentioned provides for a

hearing under Section 10 (k) of the Act on charges of violation of Section 8 (b) (4) (D) as a prerequisite to issuance by the Board of a complaint thereon. That said hearing on the charges and amended charges attached to the petition has been regularly held by the Board, and the Board's decision thereon has been duly made, filed by the Board on May 11, 1949, at Washington, D. C., and received by respondents herein on this date, and that none of these respondents are in violation thereof.

That by reason of the facts set forth in the preceding paragraph, petitioner has no cause for the relief asked in the petition or for any relief from this court, nor has petitioner nor the Board nor any Regional Director thereof ever heretofore either sought or obtained from any court injunctive relief based upon a charge of violation of Section 8 (b) (4) (D) of the Act. That no reason appears from the petition herein or otherwise why injunctive relief is appropriate herein under the provisions of Section 10 (l) of the Act quoted above.

That affiant is informed and believes and therefore alleges that petitioner has not investigated the charge and amended charges attached to the petition herein, as required by the Act, in that such investigation would provide petitioner with no reasonable cause to believe that the second amended charge or any charge relied on by petitioner is true. That petitioner has never issued any complaint against these respondents or any of them upon said second amended charge or upon any charge mentioned in the petition. That with respect to the

work of installing steam turbine generators at the Redondo Beach Station of the Southern California Edison Company, referred to in the petition, the assignment of said work to members of the Machinists union by Westinghouse was pursuant to an agreement between said Machinists and Westinghouse in violation of Sections 8 (a) (1), 8 (a) (3), 8 (b) (1) and 8 (b) (2) of the Act as amended. That the actions of respondents alleged in the petition were for the purpose of correcting said unfair labor practice and inducing the parties to said unlawful agreement to discontinue the operation thereof, and investigation of the charges referred to in the petition by petitioner as required by the Act would have revealed these facts and the lack of reasonable cause to believe that any of said charges were true.

That the illegality of said agreement which is sought to be protected and perpetuated by this petition pending final determination by the Board of some complaint not heretofore issued, although the original charge herein was filed on February 2, 1949, is alleged in charges filed with petitioner on May 9, 1949, against the Machinists and Westinghouse, copies of which are hereto attached, marked Exhibits "B" and "C," respectively, and made a part hereof.

That detailed admissions by representatives of the Machinists and Westinghouse, setting forth the unlawful conspiracy entered into between them for the purpose of making and executing said agree-

ment, are contained in an affidavit setting forth excerpts from testimony in the 10 (k) proceeding on said charges, filed concurrently herewith, and which admissions and testimony were well known to the petitioner herein at the time he filed this petition.

That the Southern California Edison Company, hereinafter referred to as Edison, is a public utility company distributing its product of electrical energy and services entirely within the State of California and the Southern California area. That the only operation of Edison involved in this matter is the construction of a building, equipped with facilities for generating electric power from gas or petroleum, which facilities constitute a local building [40] operation in replacement of a plant for the standby production of electric power from steam previously maintained by Edison for many years on the same site. That while Stone and Webster Engineering Corporation, hereinafter referred to as Stone and Webster, is in the business of general contracting, their agency in the construction of said building and facilities is solely that of agent for Edison, as is shown by the contract under which Stone and Webster is doing said work, a copy of which is hereto attached, marked Exhibit "D," and made a part hereof.

That Westinghouse Electric Corporation, hereinafter referred to as Westinghouse, is a supplier of steam turbine generating equipment for said plant, manufactured outside the State of California, but

in the erection and installation of said equipment is merely an agent of Edison, operating under the same terms and conditions as are imposed upon Stone and Webster by the contract herein set forth as Exhibit "D," as more fully appears by letters between Chadwick, Chief Engineer of Edison, and Budge, Steam Service Supervisor for Westinghouse, dated February 10th and 11th, 1949, hereto attached, marked Exhibits "E-1" and "E-2," respectively, and made a part hereof.

That the allegations in Paragraph 9 (j) of the petition concern alleged acts not set forth in any charge relied on by petitioner herein and occurring at a time when the unlawful agreement between the Machinists and Westinghouse, hereinabove set forth, was still in operation and effect. That there is not now nor has there been at any time since the filing of the original charge herein any shortage of electrical power in Southern California, as will more fully appear from the testimony of the power supervisor of Edison, set forth in another affidavit filed concurrently herewith.

That the nature of the dispute between respondents and the Machinists with respect to the work set forth in the petition [41] is one over the representation of the employees engaged in such work. That the Machinists are not in any way affiliated with or subject to the same governing body as respondents, being non-members of the American Federation of Labor, and an entirely independent labor organization which claims for itself the whole

of the work within the jurisdiction of respondents as granted by the American Federation of Labor. That it is and has been the purpose of respondents to seek to induce by such measures and by such economic pressure as are proper and lawful said employees of Westinghouse to become and remain members of respondents' organizations.

It is also our purpose to withhold support and to refrain from voluntarily supplying working men to Westinghouse for so long as Westinghouse gives effect to its unlawful agreement with the Machinists.

That the Machinists have never been certified by the Board as representatives of any employees of Westinghouse, nor have the Machinists been authorized, pursuant to Section 8 (a) (3), to enter into any agreement or arrangement whereby employees of Westinghouse as a condition of continued employment must be hired through or be members of the Machinists.

Further affiant saith not.

/s/ LLOYD A. MASHBURN.

Subscribed and sworn to before me this 13th day of May, 1949.

[Seal] /s/ ELIZABETH B. DODGE,

Notary Public in and for the County of Los Angeles, State of California. [42]

EXHIBIT A

Budget Bureau No. 64-R003.1

Approval Expires Nov. 30, 1949

United States of America

National Labor Relations Board

Charge Against Labor Organization
or Its Agents

Case No. 21-CC-53

Date Filed 2-2-49

Compliance Status Checked by:

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Labor organization or its agents against which charge is brought.

Los Angeles Building and Construction Trades Council and Lloyd A. Mashburn, its Agent.

538 South Maple Avenue, Los Angeles 13, California (Mi 0768).

The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in

unfair labor practices within the meaning of Section (8b) Subsection(s) (1), (2), (4) (A) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the charge (be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets).

From on or about January 15, 1949, to date, the above-named labor organization and its agent, Lloyd A. Mashburn, have induced and encouraged the employees of Stone and Webster Engineering Corporation, general contractors engaged in new construction work for the Southern California Edison Company at Redondo Beach, California, and have induced and encouraged employees of construction subcontractors working under Stone and Webster Engineering Corporation to engage in a strike and a concerted refusal in the course of their employment to perform any services for their employers, an object of such action being to force and require Stone and Webster Engineering Corporation and/or Southern California Edison Company to cease doing business with the Westinghouse Electric Company, and more particularly to cease using the services of Westinghouse Electric Company employees in the installation of a certain steam turbine in connection with the construction operations mentioned above.

Pursuant to said inducement and encouragement of employees, the above-named labor organization and its agent, Lloyd A. Mashburn, did call a strike of all of the members of labor organizations engaged in construction work at the Redondo Beach plant, which strike became effective on February 2, 1949 by the cessation of all work of a construction nature by members of such Los Angeles Building and Construction Trades Council, and was for the same purposes as set forth in paragraphs above.

3. Name of employer

Westinghouse Electric Company and Stone and Webster Engineering Corporation

4. Location of plant involved

Redondo Beach, California

5. Nature of employer's business

Building construction and machinery installation

6. No. of workers employed

7. Full name of party filing charge

International Association of Machinists for its Local Lodge 1235

8. Address of party filing charge

906 Van Nuys Building, Los Angeles 14, California. Tel. No. MU 1396

9. Declaration

I declare that I have read the above charge and

that the statements therein are true to the best of my knowledge and belief.

By /s/ E. M. SKAGEN,

(Signature of representative
or person making charge).

Grand Lodge Representative.

February 2, 1949.

Wilfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 80). [43]

EXHIBIT B

Budget Bureau No. 64-R003.1

Approval Expires Nov. 30, 1949

United States of America

National Labor Relations Board

Charge Against Labor Organization

or Its Agents

Case No. 21-CB-156

Date Filed 5-9-49

Compliance Status Checked by:

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Labor organization or its agents against which charge is brought

International Association of Machinists

211 West Seventh Street, Los Angeles, California

The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of Section (8b) Subsection(s) (1) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the charge

(Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets)

On or about December 1, 1947 and at various times thereafter, International Association of Machinists has restrained and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act and has caused and attempted to cause Westinghouse Electric Corporation to discriminate against employees in violation of Section 8 (2) (3) of the Act in that the International Association of Machinists has entered into an arrangement and agreement whereby Westinghouse Electric Corporation would and is employing only members of In-

ternational Association of Machinists in the placement, setting, alignment, fitting, assembling and adjustment of steam turbine generators at the Harbor Steam Plant, Long Beach, California and the Southern California Edison Company's Plant at Redondo Beach, California at a time when the National Labor Relations Board had not certified that International Association of Machinists had been authorized pursuant to Section 8 (2) (3) of the Act to make or enter into such arrangement and agreement.

3. Name of employer

Westinghouse Electric Corporation

4. Location of plant involved

600 St. Paul Ave., Los Angeles

5. Nature of employer's business

Manufacture of steam turbine generators

6. No. of workers employed

Unknown

7. Full name of party filing charge

Norval Barrett

8. Address of party filing charge

4025½ South Main, Los Angeles 37, California

9. Declaration

I declare that I have read the above charge and

that the statements therein are true to the best of my knowledge and belief.

By
(Signature of representative
or person making charge).

May 9, 1949.

Wilfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 80). [45]

EXHIBIT C

Budget Bureau No. 64-R001.1

Approval Expires Nov. 30, 1949

United States of America

National Labor Relations Board

Charge Against Employer

Case No. 21-CA-448

Date Filed 5-9-49

Compliance Status Checked by:

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB Regional Director for

the region in which the alleged unfair labor practice occurred or is occurring.

1. Employer against whom charge is brought

Westinghouse Electric Corporation

600 St. Paul Avenue, Los Angeles, Calif.

No. of workers employed

Unknown

Nature of employer's business

Manufacture of steam turbine generators

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) Subsections (1) and 8 (a) (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the charge

(Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets)

On or about December 1, 1947, and at various times thereafter, Westinghouse Electric Corporation has interfered with, restrained and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act and has and is now discriminating in regard to hire and tenure of employment and the terms and conditions of employment, in that it has entered into an arrangement and agreement with the International Association of Machinists whereby only members of the Inter-

national Association of Machinists would be and are being employed in the placement, setting, alignment, fitting, assembling and adjustment of steam turbine generators at the Harbor Steam Plant, Long Beach, California and the Southern California Edison Company's plant at Redondo Beach, California, at a time when the National Labor Relations Board had not certified that the International Association of Machinists had been authorized pursuant to Section 8 (2) (3) of the Act to make or enter into such arrangements or agreement.

3. Full name of labor organization, including local name and number, or person filing charge

Norval Barrett

4. Address

4025 1/2 South Main, Los Angeles 37, California

5. Full name of national or international labor organization of which it is an affiliate or constituent unit

6. Address of national or international

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By

(Signature of representative
or person filing charge).

May 9, 1949.

Wilfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 80). [46]

EXHIBIT D

Stone & Webster Engineering Corporation Proposal
and Term Contract for Consulting Engineering
and Design and Construction [47]

S & W E C Form No. 1-707

January 2nd, 1948

Southern California Edison Company
Los Angeles, California

We submit the following proposal for the services of our organization (I) as Consulting Engineers, and (II) as Engineers and Constructors, as hereinafter set forth, it being understood that in providing and performing such services we will function in cooperation with and subject always to the direction and control of your Directors and/or your authorized officers and agents.

Part I. Consulting Engineering

I. Work Included

When directed by you and to the extent you desire we propose to furnish the services of our organization to act as Consulting Engineers for your Company, and render the following service:

(a) Make preliminary investigations of proposed process, engineering and construction work.

(b) Prepare estimates of cost or proposed new projects or additions and improvements to existing plant or property.

(c) Furnish general advice and assistance on construction and reconstruction work other than that for which complete engineering and construc-

tion services are to be furnished as hereinafter described:

(d) Assist in the solution of any special engineering problems that may arise in connection with the operation of your property.

(e) Make special engineering studies for improvement of plant operations and provide qualified men to instruct the local forces in the most economical operating methods for plant or process facilities.

(f) Make business studies and analyses of industrial and other situations for improvement of organization, financial conditions, manufacturing costs, sales or distribution procedure and other related [48] problems.

(g) Make shop inspections of machinery and equipment, under construction for your Company, with the use of proper materials, accurate assembly, and prompt shipment, as objectives.

(h) Make appraisals of your property and other engineering investigations relating to property value for use in rate or other proceedings in which such evidence may be necessary, and furnish expert testimony with reference thereto before courts or regulatory authorities.

II. Compensation

For the services included in this Part I of this proposal we will charge you two thirds of our regular expert or per diem rates of the members of our organization for the time during which they

are engaged on the work plus travelling and incidental expenses.

Part II. Design and Construction

I. Work Included

When directed by you, we, acting as your agent, propose to furnish the services of our organization in designing and constructing or reconstructing substantial elements of your property or additions thereto, including the following:

Steam power stations;

Water power developments;

Electrical substations;

Overhead and underground transmission lines and distributing systems;

Process plants and refining, extraction and chemical units;

Industrial plants, shops and related structures;

Gas producing plants and gas holders;

Oil and gas transmission pipe lines and pumping and compressor stations;

Dams, reservoirs, pipe lines, pumping stations and purifying systems for water supply; [49]

Railroad work and structures;

Office and other buildings.

When directed by you to do so, we will include as a part of our work the negotiation for and acquisition of land, rights-of-way, easements or other rights.

II. Service to be Rendered

When directed by you, we propose to act as your

Engineering, Purchasing and Construction Departments, working at all times in close cooperation with members of your organization, assuming as much responsibility as you may delegate to us in the direction of the work undertaken for you, and being guided in all respects by such instructions as you may from time to time give us.

All work which we undertake for you hereunder, if in any way connected with property already in operation, will be carried on in full cooperation with your operating organization, and with the least possible interference with the continuity and efficiency of the service rendered by the operated property consistent with your instructions in respect to the general conduct of the construction work. Upon completion of the work we will make available men qualified to instruct your operating personnel as to the proper methods of operation and maintenance of any new types of equipment included in such work.

To the extent you may desire, you will have full control of the work in all its phases, and of the selection and purchase of materials, machinery and equipment, the letting of such contracts as may be desirable, the wages, hours and conditions of labor, the progress and sequence of the work, and all other questions. You may order additional work, cancel work previously authorized or make any other change in either scope or character.

As Engineers, we will make all necessary engineering studies and determinations, recommend to

you the type and character of equipment and of construction required and prepare plans and specifications [50] for equipment, materials and construction work.

As Purchasing Agents, we will purchase, inspect and expedite the shipment of the necessary materials, machinery and equipment.

As Constructors, we will organize forces for the execution of the construction and the installation of the machinery and equipment, subletting parts of the work when it is to your advantage to do so, and turn the completed work over to you ready for use.

III. Orders and Contracts

All orders and contracts placed by us, and other obligations, except payrolls, shall be in your name "By Stone & Webster Engineering Corporation, Agent," and we assume no pecuniary liability under or by reason of such obligations.

IV. Disbursements

We will make all payments for materials, equipment, payrolls, services, etc., for your account from funds to be advanced to us by you for the purpose, rendering you each month a detailed statement of receipts and expenditures, supported by proper vouchers.

V. Insurance

We will place insurance to cover your liability and our own to employees engaged on this work, in accordance with Workmen's Compensation Laws of the State wherein the work is to be undertaken;

and to the public, with limits, unless otherwise requested by you, of \$50,000 for bodily injury to or the death of any one person and \$100,000 for any one accident in which more than one person is involved.

If you so request, we will place insurance covering damage to property of others arising out of or resulting from the performance of the work or covering damage to the work by fire, flood, tornado, earthquake and/or otherwise.

VI. Audit

Our correspondence, records, vouchers and books of account, in so far as they pertain to the work done or disbursements made for [51] your account under this agreement, will be always open to your inspection and audit.

VII. Progress Reports

We will render you monthly reports showing receipts and disbursements, the progress of the work in its various parts, and any changes that it may seem advisable to make in the estimates of cost or of time required for completion.

VIII. Compensation

For the services provided for in this Part II of this proposal and to include our administrative and incidental costs and our profit, we will charge you a fee based on the character and cost of the work done. For the purpose of determining the fee in any particular case, the classification of such work,

considered as a whole, shall be established as follows:

Class A—Work involving a relatively large amount of engineering, and a relatively large amount of service from the Purchasing, Construction and other departments of our Headquarters and District Offices. This Class includes steam power station projects, water power developments, substations, transmission lines, underground distributing systems, refining and process plants, pulp and paper mills, chemical, industrial and heavy manufacturing plants, gas generating plants, reservoirs, pumping stations and purifying systems for water supply and work of a similar character.

When a process or other special project involves a high ratio of engineering to the "Cost of the Work" as defined in Section X, the twice salary basis outlined in paragraph (d) of Section X and the fee schedule for Class C work in this Section VIII shall apply.

Class B—Work involving relatively less engineering, and a relatively less amount of service from the Purchasing, Construction and other departments of our Headquarters and District Offices. [52] This Class includes shops, warehouses and factory, educational, hospital and office buildings, overhead distributing systems, gas holders, pipe lines and work of a similar character.

Class C—Construction only of any work enumerated in Classes A and B, and work involving rela-

tively little designing such as railroad work, excavation, grading, paving or work of a similar character.

The fee charged for these three classes of work will be the percentage of the "Cost of the Work" as defined in Section X below, indicated in the following schedule which gives consideration to the intent that we will do for you such of the above work as in your interest can be executed most advantageously by our organization.

Cost of Work exclusive of fee	Fee in per cent of "Cost of the Work"		
	Class A	Class B	Class C
\$500,000 and less.....	9 $\frac{3}{4}$	8 $\frac{1}{4}$	6 $\frac{1}{4}$
\$500,000 to \$1,000,000.....	8 $\frac{3}{4}$	7 $\frac{3}{4}$	5 $\frac{3}{4}$
\$1,000,000 to \$2,000,000.....	8 $\frac{1}{4}$	7 $\frac{1}{4}$	5 $\frac{1}{4}$
\$2,000,000 to \$3,000,000.....	7 $\frac{3}{4}$	6 $\frac{3}{4}$	4 $\frac{3}{4}$
\$3,000,000 to \$5,000,000.....	7 $\frac{1}{4}$	6 $\frac{1}{4}$	4 $\frac{1}{4}$
\$5,000,000 to \$10,000,000.....	6 $\frac{3}{4}$	5 $\frac{3}{4}$	3 $\frac{3}{4}$
\$10,000,000 to \$15,000,000.....	6 $\frac{1}{4}$	5 $\frac{1}{4}$	3 $\frac{1}{4}$
Over \$15,000,000.....	5 $\frac{3}{4}$	4 $\frac{3}{4}$	3

When two or more projects are authorized and carried on simultaneously at or in the same general locality and require only a single administrative field force, the per cent of fee for each will be based on the total cost of such two or more projects.

Payments in accordance with the above schedule of fees shall be made monthly on Class C work, based upon the detailed statements of expenditures referred to in Section IV above. On work falling in Classes A and B, to cover our administrative and incidental costs on the initial engineering and design, a part of the fee shall be paid us in fixed monthly installments to be mutually agreed upon,

further payments being made monthly by applying the percentage fee for the work to total expenditures and deducting previous payments.

In case of termination under Section XI below, we shall be entitled [53] to retain all compensation previously paid to us hereunder, and in addition, in the event the specified percentage on expenditures, accounts due and payable, outstanding obligations and uncompleted contracts and orders as of the date of such termination is in excess of the compensation so previously paid to us, we shall be paid the amount of such excess.

IX. Administrative and Incidental Costs

The fee above specified includes the following:

(a) The service of the Executive Officers of the Corporation in our Headquarters and District Offices who will direct the work to be performed under this agreement.

(b) The service of a Construction Manager and the construction staff in our headquarters and District Offices in the organization of the working forces and the selection and assignment of superintendents and other members of the field force. The Construction Manager assigned to the work will keep in close touch with it at all times and make periodical visits to the site.

(c) The service of the General Purchasing Agent and the purchasing staff in our Headquarters and District Offices to direct and assist in the purchase of materials and equipment.

(d) The service of the Treasurer, Assistant Treasurers, Auditor and the accounting and auditing staffs in our Headquarters and District Offices to direct the accounting and office work of the field office and verify all accounts, vouchers and reports.

(e) The service of the Insurance Manager and his staff in our Headquarters Offices in connection with all insurance coverages.

(f) All other expense of our Headquarters and District Offices, except such items as are included in the "Cost of the Work" under Section X.

X. Cost of the Work

You shall pay the "Cost of the Work" which shall include [54] the following items whether commitments or expenditures are made by you direct or by us for your account:

(a) All materials, equipment, labor, and contracts covering these items, including the market value of materials and equipment that may be supplied by you.

(b) The cost of land, rights-of-way, easements or other rights when negotiated for or acquired by us for your account.

(c) The rental of any equipment hired and the cost of tools and construction equipment purchased, less the salvage on any that may be sold.

(d) Salaries of employees in our Engineering, Drafting, Estimating and Inspection-Expediting Departments for the time they are engaged on your work, except in case of authorizations for work on

the basis of the fee schedule for Class C under Section VIII when services of personnel from these departments, if required, will be included at salaries plus an equal amount for overhead expenses.

(e) A field office and its equipment and maintenance; the salaries of a Superintendent of Construction, an Accountant, a Purchasing Agent, and such assistants as they may require.

(f) The amount of any contributions required by law and/or taxes based on the salaries or wages of the employees performing the labor mentioned in paragraph (a) and those mentioned in paragraphs (d) and (e) of this Section X. Such contributions and/or taxes shall be for your account but are not included in the amount on which our fee is based. However, in the case of authorizations for work on the basis of the fee schedule for Class C under Section VIII and where the services of personnel mentioned in paragraph (d) of this Section X, if required, are furnished at salaries plus an equal amount for overhead expenses, the contributions and/or taxes on the salaries of the employees mentioned in said paragraph (d) shall be considered covered by the overhead [55] allowance and, therefore, shall not be otherwise reimbursable.

(g) Any traveling expenses or expenses of a similar character, and such other expenditures as we may make for your account.

(h) Fire, liability and other insurance, and the cost of rebuilding any work destroyed or damaged.

(i) Any expenses incurred and payments made in connection with accident or injury to person or property not covered by insurance. Such expenses and payments shall be for your account but are not included in the amount on which our fee is based.

(j) All discounts, rebates, earnings of commissary or other utilities, and similar receipts are creditable to "Cost of the Work."

XI. Termination of Work

If at any time you should wish, for any reason, to discontinue any project, you are at liberty after ten days' notice in writing to terminate our employment in connection therewith and to take possession of the work done and material and equipment purchased for you under the terms hereof.

Part III. Term of Contract

This proposal, when accepted by you, will become a contract effective as of January 2nd, 1948 to remain in force and effect for a period of five years from said date unless terminated by mutual agreement or by either party on thirty days' written notice to the other party, each party reserving the right to terminate the contract at will.

It is understood, however, that this contract shall continue in force and effect as to any work previously authorized and still in progress at the time of the termination of this contract, whether by expiration of said period of years or by notice as above provided, until the completion of such work, unless you specifically elect to terminate the

contract as to [56] any such work in accordance with Section XI of Part II hereof.

STONE & WEBSTER ENGI-
NEERING CORPORATION,

By /s/ C. A. BIGELOW,
Vice President.

Accepted January 29th, 1948.

SOUTHERN CALIFORNIA
EDISON COMPANY,

By /s/ E. R. DAVIS,
Vice President.

EXHIBIT No. E-1

Southern California Edison Company
Edison Building
Los Angeles 53, California

February 10, 1949

Mr. W. L. Budge, Steam Service Operator
Westinghouse Electric Corporation
600 St. Paul Avenue
Los Angeles 14, California

Dear Mr. Budge:

Reference is made to our Purchase Order No. 10332-SWR under which you are erecting the No. 2 house set at our Redondo Steam Station. Pending conclusion of the current issue between the Los Angeles Building and Construction Trades Council and the International Association of Machinists

concerning jurisdiction over the mechanical erection work on that unit, it is desired for the time being to suspend all erection work thereon as of today. Please understand that this instruction in no way nullifies or cancels the referenced Purchase Order.

Very truly yours,

/s/ W. L. CHADWICK,

Manager of Engineering
Department.

WLC:gf [58]

EXHIBIT No. E-2

February 11, 1949

Mr. W. L. Chadwick
Manager of Engineering Department
Southern California Edison Company
Edison Building
Los Angeles 53, California

Dear Mr. Chadwick:

Reference is made to your letter dated February 10, 1949 in which you state that you desire us for the time being to suspend all erection work on the No. 2 house set at your Redondo Steam Station, pending conclusion of the current issue between the Building and Construction Trades Council and the IAM concerning jurisdiction over the mechanical erection work on that unit.

In accordance with your instructions we have this date discontinued all erection work on the No. 2 house set at Redondo Beach, and have removed our two IAM machinists from the project. It is under-

stood, however, that the Redondo erection is being suspended for the sole reason that you have requested such action pending conclusion of the current dispute between the AFL and IAM and that any obligations on our part arising out of your Purchase Order No. 10332-SWR are also suspended.

We stand ready to complete this job whenever we are authorized by you to return to the project with our machinists.

Very truly yours,

W. L. BUDGE,

Steam Service Supervisor.

[Endorsed]: Filed May 16, 1949. [59]

[Title of District Court and Cause.]

ORDER ON DECISION

The Motion and Application of the Plaintiff for a temporary injunction, heretofore heard, argued and submitted, is now decided as follows:

Upon the grounds set forth in the Opinion filed this day, a temporary injunction will issue in the following terms:

That until final determination of this case, a temporary injunction will issue enjoining and restraining respondents, and each of them, their agents, servants, employees, attorneys and all parties in active concert or participation with them, from engaging in, or inducing or encouraging the em-

ployees of Stone and Webster, Westinghouse, or any other employers, to engage in a strike or [60] concerted refusal in the course of their employment, to use, manufacture, process, transport or otherwise handle or work on any goods, articles or materials or commodities belonging to or utilized by Stone and Webster, Westinghouse or any other employer engaged on the construction project for Edison at Redondo Beach, California, or to perform services for Stone and Webster, Westinghouse, or any other employer on said project, where an object thereof is to force or require Westinghouse and/or Stone and Webster to assign the work of installing steam turbine generators to members of respondent Millwrights, rather than to employees of Westinghouse who are now members of Machinists, or any other labor organization, unless respondent Millwrights is certified by the Board as the bargaining representative for the employees performing such work.

Findings to be prepared by counsel for the Petitioner, under Local Rule 7. Decree to conform.

Dated this 26th day of May, 1949.

/s/ LEON R. YANKWICH,
Judge.

[Endorsed]: Filed May 26, 1949. [61]

[Title of District Court and Cause.]

Yankwich, District Judge:

OPINION

I.

The Facts in the Case

On May 3, 1949, Howard F. LeBaron, Regional Director of the Twenty-first Region of the National Labor Relations Board, filed a petition for injunction under Section 10(1) of the National Labor Relations Act, as amended, (1) seeking relief pending the final adjudication by the Board of a matter then pending before them on charges alleging that the respondents are engaged in violations of Section 8(b), Subdivision 4(D) of the Act. (2)

The Respondents are the Los Angeles Building and Construction Trades Council—to be referred to as Council—a labor association consisting of eighteen labor organizations engaged in the building trades industry in the Los Angeles area, Lloyd A. Mashburn, its agent, Millwright and Machinery Erectors Local 1607 of the United Brotherhood of Carpenters and Joiners of America, American Federation of Labor—to be called Millwrights—and Herman R. Barbaglia, its agent.

On April 15, 1949, Local Lodge 1235 of the International Association of Machinists—to be called Machinists—filed charges with the Board alleging that the Respondents have engaged in, and are engaging in unfair practices in violation of the Act, which have been referred to the petitioner as Regional Director for investigation. [63]

The facts back of the charge are: Southern California Edison Company—to be designated as Edison—a California corporation, is a public utility engaged in furnishing electrical energy and service to the Los Angeles and Southern California area. Thirty-nine per cent of its output of electrical energy goes to instrumentalities of interstate commerce and concerns engaged in interstate commerce, such as oil refineries, rubber companies, steel plants and aircraft machines. In the operation of its business, Edison, during the past year, purchased raw materials of a value of in excess of three million dollars, of which approximately $66\frac{2}{3}$ per cent originated outside the State of California. Approximately $25\frac{1}{2}$ per cent of the total power utilized by it during the past year came from outside the state. Edison is now engaged in the construction and equipment of a new steam turbine electric power generation station at Redondo Beach, California, which was begun in July, 1946. The estimated completed cost of it is in excess of \$38,000,000.00, of which \$18,500,000.00 is the purchase value of equipment, \$12,700,000.00 in value of which has been, or will be transported from outside the State of California directly to the job site. The construction is 75 per cent completed and the units now in operation at the station furnish approximately 15 per cent of Edison's total output of electrical energy.

Stone and Webster, a construction corporation, has the general contract for construction of the station. For the past several months, it has had ap-

proximately 550 of its own employees working on the project. There are other sub-contractors, whose employees have been engaged on the project, [64] and who are members of all the trade unions affiliated with the Council.

Some time prior to December, 1948, Edison contracted with Westinghouse for the furnishing and installation of several steam turbine generators at Redondo Beach plant. These generators, of the total value of approximately \$4,800,000.00, were manufactured by Westinghouse in Lester and East Pittsburgh, Pennsylvania, whence they were shipped to California for installation.

On January 31, 1949, Westinghouse began the installation of one of the turbine generators, a 60,000 kilowatt unit pursuant to its contract with Edison. In the installation, it used employees who were members of Machinists. On February 2, 1949, the Respondents, as the Complaint alleges, engaged in and by "orders, directions and instructions induced and encouraged" the employees of Stone & Webster, Westinghouse and others on the Redondo Beach station project to "engage in a strike or concerted refusal in the course of their employment to transport, or, otherwise, handle or work" on Westinghouse products or to perform services for their employers in connection with the project.

Westinghouse Electric Corporation, on March 29, 1949, began the unloading of a turbine generator of 60,000 kilowatt units, shipped from its plant at Lester, Pennsylvania, to California for installation

by its employees, who are members of Machinists, at the Redondo Beach station, using in the unloading operation riggers who are members of International Association [65] of Bridge Structural and Ornamental Iron Workers Local No. 433, a constituent union of the Council.

On April 11, 1949, the Respondents engaged in and "by orders, directions, instructions induced and encouraged" the riggers employed by Westinghouse to engage in a strike or concerted refusal "in the course of their employment, to transport, or otherwise handle or work on the Westinghouse products" in connection with the Redondo Beach installation.

The object of the acts of the respondents was—in the language of the Complaint—to require Westinghouse and Stone and Webster to "assign the work of installing the steam turbine generators at the Redondo Beach station to members of Millwrights, rather than to the employees of Westinghouse, who now are members of Machinists."

The petition also averred the existence of a critical power shortage in Southern California, resulting from an inadequate supply of water for the generation of power and increased demand for electrical power—a shortage which the Redondo Beach station was planned to alleviate by generating electrical energy by steam and increasing Edison's production capacity by 30 per cent.

In the main, these facts are not disputed, either by the Return to the Order to Show Cause, or the affidavits filed in conjunction with the hearing on

the Order. It appeared at the hearing that only two members of Machinists were involved, who had been withdrawn from their job in order to [66] secure the return to work of the member unions of the Council. Before the hearing of the Order to Show Cause, on May 11, 1949, the Board rendered its decision under Section 10(k) of the Act. (3)

In substance, it found that the Respondents "are not and have not been, lawfully entitled to force or require Westinghouse Electric Corporation to assign work on the installation of steam turbine generators at Southern California Edison Company's plant at Redondo Beach, California, to members of Millwright and Machinery Erectors Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L., rather than to employees of Westinghouse Electric Corporation who are members of International Association of Machinists, Local Lodge 1235."

Other facts will be referred to further on in the opinion.

Before me is an application for a temporary injunction.

II.

The Legal Questions Involved

(A) The Aim of the Taft-Hartley Act.

The determination of the problem involved here calls for the interpretation of certain provisions of the Labor Management Relations Act of 1947, popularly known as the Taft-Hartley Act. (4) That, in turn, requires a consideration of the legislative ob-

ject sought to be attained. (5) One of the objects of the National Labor Relations Act (6), which this Act purported to amend and supplement, was to encourage "the practice [67] and procedure of collective bargaining" and to protect "the exercise by the workers of full freedom of association, self organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment and other mutual protection." (7)

The jurisprudence of the Act, declared both by the Board and the Courts, reflected these twin aims of the Act—the encouragement of unionization and of collective bargaining through it. For this purpose, the Act conferred certain rights on the workers as groups, and prohibited certain acts of the employers inconsistent with these aims, which were declared to be unfair practices on the part of the employers. (8) This it did through the use of plenary powers of the Congress to regulate interstate commerce. (9) The Taft-Hartley Act did not aim to confer any additional organizational rights. To the contrary, it aimed to take away certain rights, which, either by the language of the Act, or through administrative and judicial interpretation, had been held to flow from its enactment. As one writer has put it:

"The Taft-Hartley amendments represent an abandonment of the policy of affirmatively encouraging the spread of union organization and collective bargaining." (10)

This aim must be kept in mind in resolving the limited issue which the present proceeding presents.

(B) The Validity of the Prohibition Against Forced Work Assignment.

At the outset, we are met with the challenge that Section 8(b)(4)(D) of the Act (11), which declares it to be an unfair practice on the part of a labor organization or its agent to force or require an employer to assign particular work to employees in a particular organization or group, rather than another, is unconstitutional.

As a matter of judicial policy, the constitutionality of a statute should not be determined upon a motion of this character, but rather upon a full hearing on the matters. For the factual situation may affect the constitutional aspects of a statute. Such an attitude is enjoined upon us by the principle which commands us to place upon any statutory enactment an interpretation consistent with constitutionality. (12) The broad implications of the earlier labor cases (13), which equated certain union practices with the guaranty of free speech of the First Amendment, have been brushed aside by the later decisions of the Supreme Court. (14) The gloss of the late cases is that both the state legislatures and the Congress may prohibit union practices which they deem socially harmful. Very recently, the Supreme Court stated that neither the First nor the Thirteenth Amendment stands in the way of outlawing certain acts by unions or their agents. (15) The statute under consideration per-

mitted a State Board to forbid intermittent and unannounced work stoppages. A state statute prohibiting peaceful picketing [69] was sustained (16) against the attack that it interfered with the dissemination of truthful information about a labor dispute under the doctrine of *Thornhill v. Alabama*. (17) So-called "right-to-work" statutes, which forbid denial of employment because of non-membership in labor organizations have been given judicial sanction in almost unanimous decisions. (18) These state enactments preceded the Taft-Hartley Act. In fact, they represent local movements to limit the organizational rights of labor which the Taft-Hartley Act, later, sought to, and did, adopt as national policy. Whether it is socially wise to determine by legislation policies which heretofore had been left to the "collective bargaining and the play of economic forces" (19), is beyond the scope of this inquiry. Our reference to it is merely to point to the touchstone by which the Act must be assayed. And the conclusion is inescapable that, in dealing with the almost limitless power to regulate commerce, the Congress cannot be said to have exceeded its constitutional bounds when it declared coercion in the assignment of work (and "requiring," by use of economic power, is as coercive as "forcing") to one rather than another individual or group to be an unfair labor practice, when states can, by legislation, prohibit group practices by unions which deny employment to outsiders, interfere with production unnecessarily or result in sec-

ondary boycotts or in picketing of the most peaceful manner.

Apposite on the subject are the words of Judge Bratton: [70]

“The constitutional right of free speech and free press postulates the authority of Congress to enact legislation reasonably adapted to the protection of interstate commerce against harmful encroachments arising out of secondary boycotts. The promulgation and circulation of a blacklist and the picketing of premises as the means of waging a secondary boycott which has the effect of substantially burdening or obstructing interstate commerce is not protected by the First Amendment or section 8(c) of the Act. Concretely, neither the constitutional nor statutory provision protected appellants in their blacklisting of Klassen and their picketing of its premises as a means of waging a secondary boycott against that company, with substantially harmful effect upon interstate commerce.” (20)

We conclude that the section under discussion presents no constitutional infirmity.

III.

The Adequacy of the Showing in the Case

(A) Discretion in Granting Temporary Injunctions.

We come now to the showing made in the case, which the Respondents claim to be inadequate. Before considering the matter, we advert to the principle that the granting or denying [71] of a tem-

porary injunction is “primarily a matter of discretion for the trial judge.” (21) That this general principle has found application in cases arising under this very Act is evidenced by the following language of the Court of Appeals for the Tenth Circuit:

“It is not the inflexible duty of the court in every case of this kind to grant a temporary injunction to remain in force and effect until the Board makes its final adjudication of the charge of unfair labor practice. The court has a reasonable permissive range for the exercise of its discretion in the granting of injunctive relief appropriate to the particular circumstances presented, or in withholding its writ.” (22)

The steps required for invoking the jurisdiction of this court are described in Section (10)(1) of the Act, which reads, in part:

“Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4), (A), (B), or (C) of section 158(b) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the officer where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the [72] matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the

District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law:" (23) The final clause of the Act reads:

"In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 1 58(b)(4)(D) of this title." (24)

The Respondents seem to think that the clause last cited is meaningless. They call it "an after-thought." We see no reason for so labelling it. It follows the pattern adopted in legislation where, after describing, in detail, a procedure to apply under certain conditions, an omnibus clause is added declaring that the same procedure shall obtain under other provisions of the Act. So here, it is first recited that before an application is made to the court, there must be (1) a charge of unfair labor practices, (2) a preliminary investigation, (3) reasonable belief induced by the investigation that the charge is true and that a Complaint should issue. It is then specifically provided that this procedure shall not only apply to violations of unfair labor

practices under Section 8(b) (4) (A, B, and C) but also as to 8(b) (4) (D). Time does not permit an investigation to determine the origin of the last clause or the reason why it was not included in the general language of the subdivision. It may be surmised that it originated some time during the legislative transformation which the Act underwent before the two Houses or in conference and that, rather than rewrite the entire section to include Clause (D), the specific provision was added. Be that as it may, it is quite apparent that it is just as effective to make the procedure applicable to violations under Clause (D) as to the others. In conformity with the requirements of the Statute, as already appears, the Complaint alleges the making of a charge, which is attached to the petition as an exhibit. Examination shows that the charge is contained in more or less formal documents on printed blanks supplied, evidently, by the Board and signed by a representative of the Machinists. The specific acts complained of are set out in the petition and the affidavits which accompanied it. An extensive hearing was had, after notice, and testimony was taken on behalf of the complainants and respondents. It has been stated that the transcript covers over [74] 1000 pages. Portions of it contained in affidavits filed in conjunction with the hearing exceed 150 pages.

On May 11, 1949, the Board rendered its decision, the terms of which are adverted to in the statement of facts. The petition states that the Regional

Director, to whom was delegated the duty to make the investigation, and after such investigation

“has reasonable cause to believe that the said second amended charge is true and that a complaint of the Board based thereon should issue against the respondents pursuant to Section 10(b) of the Act. More particularly, and upon the basis of such investigation and of the evidence disclosed as a result thereof, petitioner has reasonable cause to believe and believes that respondents have engaged in conduct in violation of Section 8(b), subsection (4)(D) of the Act, and affecting commerce within the meaning of Section 2, subsection (6) and (7) of the Act.”

The action of the Board, in making a determination under the provision of Section 10(k) of the Act, is a confirmation of the existence of reasonable cause to believe that the charge is true. It is true that no coercive action has yet been taken by the Board. For, under the provisions of the Act, the Respondents have the alternative of either complying with the decision or of voluntarily adjusting the dispute with the employers. Either of these acts, if it occurs, will be followed [75] by a mandatory dismissal. At the time of the hearing, there was no indication of the action to be taken by the Respondents. The order could not, as it claimed, make the question before the Court moot, unless there is compliance or adjustment before action is taken on the matter pending before the Court. The time for such action has long passed, and, when this

is written, there has been neither compliance nor adjustment. The Respondents would have us review the facts and determine either that the determination by the Board was wrong or that the facts were such that they do not show reasonable ground for believing that a violation of law had occurred.

(B) Reasonable Grounds.

Even if we were sitting as a court of appeal with power to review the sufficiency of the findings of the Board, we would be bound to follow them, if based upon conflicting testimony or upon divergent inferences which could be drawn from even admitted facts. (26) As it is, the invocation of the power of this court is not conditioned upon such finding. All the petitioner has to show is that he has reasonable cause to believe that the charge is true and that a complaint should issue. The phrases "reasonable cause" or "reasonable ground" are standard in law. Their meaning, when made a condition for action, has long been established. The test by which compliance is determined is whether the facts are such that a reasonable person could be led to believe that they constitute a violation of law. They need not be sufficiently to actually prove such violation. As said by the Court of Appeals for the Eighth [76] Circuit, in interpreting a similar requirement under the Fair Labor Standards Act:

"For investigatory purposes under the Act, it would amount simply to a justifiable basis for believing that a certain state of facts probably exists, derived from reasonable inquiry or other credible

information. As applied to the immediate situation, it would be such facts or information as reasonably would lead the Administrator to believe that appellees' business, in some phase, was apparently and probably subject to the Act." (27)

It is undisputed that the controversy here relates to the right of Machinists to have the work assigned to them rather than have it assigned to some of the members of the unions in the respondent group. Whether we call this a "jurisdictional" dispute or not is immaterial. The lengthy hearing, the fact that the Respondents did call, and are threatening to call again, a strike involving over 500 persons, in order to enforce the demand that two machinists be not given particular work, indicates the seriousness of the situation. And the insistence of Machinists, whether they constitute a bona fide labor organization, or we apply to them the term so opprobrious in labor circles of "company union," on the right of the two men to this work, is definite proof that a situation has arisen where the Regional Director can reasonably reach the conclusion that the problem involved is an attempt on the part of the respondents to "force" or "require" their employers to assign the work to a particular labor organization, group or class. The Act does not exclude company unions from the designation of "labor organization." The term is defined in this manner:

"The term 'labor organization' means any organization of any kind, or any agency or employee rep-

representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.” (28)

This definition is broad enough to cover, as its language specifically states, any organization of any kind, or any agency or representation committee of workers. The fact alluded to at the argument that this particular group may have been organized at the instigation of the employer is of little significance. For, as already stated, it is not the object of the statute to further “regular” labor organizations. Indeed, it seeks to curtail their authority and to set up against them the rights of others, whether organized or not. A writer, who is in sympathy with the policy of the Act, sets forth as one of the changes in the philosophy of labor-management relations, introduced by the Act, the fact that

“The Act confers for the first time upon employees the right to ‘refrain’ from exercising the right to [78] join a union, except in the case of a union shop.” (29)

So the problem must be solved with this aim of the Act in view. To say that, in the light of the facts which are before the Court, the Regional Director has not shown reasonable ground for his belief that a violation has occurred, is to totally disregard the realities which the record in this proceeding presents.

Grant that, notwithstanding the Director’s con-

clusion, the granting of a temporary injunction still remains discretionary, what has just been said shows conclusively that it should issue. The aim of all legislation and of government, for that matter, is to achieve social peace. The aim of labor legislation is to achieve peace in labor relations. The means of achievement are under the sole control of legislators. Here the legislative body has laid down a complete scheme which must be followed both in the realms of administration and judicature. In matters as to which discretion is rested in the court, the inquiry in a particular case should be whether the public goodwill be served by using its coercive powers. That calls for a balancing of interests, in the light of social aims to be attained. Courts should, and do, hesitate to issue temporary injunctions pending the final determination of a lawsuit, when such action would, in effect, settle the controversy. Here, the issuance of the injunction would not mean such determination. It would merely mean that two men would be permitted to do certain work until the Board determines—assuming that there is no compliance [79] or adjustment of the proceeding pending before it—whether other action shall be taken under the Act. The presence of two men on a project requiring the services of hundreds would not result in any damage to the respondent organizations or any loss of prestige or “face” to them or their members. If the ultimate action favor Machinists, it would merely mean that on the particular job—which may be completed by the time the Board has made a final order—two out-

siders—let us call them “interlopers”—have done part of the work. Well, the Taft-Hartley Act postulates the possibility that situations may arise where persons not connected with regular or orthodox labor organizations might work along side of the members of such organizations. If the ruling be in favor of the Respondents, then the loss is not greater than that two persons have drawn employment from a source which, by right, belongs to the respondents.

As against this, we have the threat of a strike by hundreds of persons on a construction and installation which undeniably has the character of interstate commerce, (30) from which great harm can flow, not only to the employers, but to the community which the Edison Company serves. This, because of the consequential delay in the construction of a plant, the aim of which is to increase the availability of electrical power for transmission and distribution in interstate commerce, at a time when there is a diminution of the water supply due to the scanty rain-fall in this region in the last four or five years. [80]

So a temporary injunction until the Board determines the controversy by a final order will serve the public good.

The motion for temporary injunction is granted, in terms contained in separate order filed herewith.

Dated this 26th day of May, 1949.

/s/ LEON R. YANKWICH,
U. S. District Judge. [81]

Notes to Text

1. 29 U.S.C. Supp. 1 (1948), Sec. 141 et seq.
2. 29 U.S.C. Supp. 1 (1948), Sec. 158(b)(4)(D).
3. 29 U.S.C. Supp. 1 (1948), Sec. 160(k).
4. 29 U.S.C. Supp. 1 (1948), Sec. 141 et seq.
5. *United States v. American Trucking Assns.*, 1940, 310 U.S. 534, 543-544; *Chatwin v. United States*, 1946, 326 U.S. 455, 463-464; *United States v. Carbone*, 1946, 327 U.S. 633, 637-639.
6. 29 U.S.C.A., Sec. 151 et seq.
7. 29 U.S.C.A., Sec. 151.
8. 29 U.S.C.A., Sec. 160.
9. *National Labor Relations Board v. Jones-Laughlin Steel Corp.*, 1937, 301 U.S. 1. When exercising this power, the Congress has the unlimited choice of means "considered necessary for bringing about the desired conditions in the channels of interstate commerce." (*American Power Co. v. Securities Exchange Commission*, 1946, 239 U.S. 90, 100.)
10. Archibald Cox, *Some Aspects of the Labor Management Relations Act*, 1947, 61 *Harvard Law Review*, p. 1 et seq.; p. 274 et seq., at p. 44.
11. 29 U.S.C.A., Sec. 158(b)(4)(D).
12. *Anniston Mfg. Co. v. Davis*, 1937, 301 U.S. 337, 351-353; *Ex parte Endo*, 1944, 323 U.S. 283, 299-300. [82]

13. Cf. *Thornhill v. Alabama*, 1940, 310 U.S. 88.
14. *Barbara Nachtrieb Armstrong, Where Are We Going With Picketing?*, 1948, 36 Calif. Law Rev., p. 1.
15. *International Union A.U.W.A. v. Wisconsin Empl. Relations Board*, 1948, 336 U.S. 245, 251.
16. *Bigoney v. Empire Storage and Ice Co.*, 1947, 330 U.S. 490.
17. *Thornhill v. Alabama*, 1940, 310 U.S. 88.
18. *Lincoln Federal Labor Union v. Northwestern Co.*, 1949, 335 U.S. 525; and see, *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 1949, 336 U.S. 301.
19. *Archibald Cox*, op. cit., p. 315; and see, *Thomas R. Mulroy, The Taft-Hartley Act in Action*, 1948, 15 University of Chicago Law Review, p. 595, et seq.
20. *United Brotherhood of Carpenters v. Sperry*, 1948, C.A. 10, 170 F(2) 963, 869; and see, *Painting Specialties and Paper etc. v. LeBaron*, 1949, C.A. 9, 171 F(2) 331.
21. *Lane Bryant Inc. v. Maternity Lane*, 1949, C.A. 9, 173 F(2) 559, 564; and see, *Virginia Ry. Co. v. Federation*, 1937, 300 U.S. 515, 552; *Hecht Co. v. Bowles*, 1944, 321 U.S. 321.
22. *United Brotherhood of Carpenters v. Sperry*, 1948, C.A. 10, 170 F(2) 863, 868.

23. 29 U.S.C.A., Sec. 160(L).

24. 29 U.S.C.A., Sec. 160(L).

25. 29 U.S.C.A., Sec. 160(k).

26. *Grace Bros. v. Commissioner*, 1949, C.A. 9, 173 F(2) 170; *Yankwich, Findings Under the Federal Rules of Civil Procedure*, 1948, 8 F.R.D., 271, 288. [83]

27. *Walling v. Benson*, 1943, C.A. 8, 137 F(2) 501; and see, *Grant v. National Bank*, 1878, 97 U.S. 80; *McDougal v. General Finance Corp.*, 1941, C.A. 7, 123 F(2) 99; *Cusick v. Second National Bank*, 1940, App. D.C., 115 F(2) 150, 153-155; *Bowles v. Montgomery Ward & Co.*, 1944, C.A. 7, 143 F(2) 38, 42; *Van Sant v. American Exp. Co.*, 1947, 158 F(2) 924, 930. Even in criminal law, when a showing of "reasonable" or "probable" cause or ground is required—such as, for instance, before holding a defendant to answer after preliminary examination—under Rule 5(c) of the Federal Rules of Criminal Procedure—only a *prima facie* showing need be made. And, the evidence need not be of a character which would convict. See, *McNamara v. Henkel*, 1913, 226 U.S. 520; *Collins v. Loisel*, 1922, 259 U.S. 309; *Burton v. Smithers*, 1929, C.A. 4, 31 F(2) 966; *Curreri v. Vice*, 1935, C.A. 9, 77 F(2) 130. *Yankwich, Commentary on Criminal Rules*, 1946, p. 149.

28. 29 U.S.C.A., Sec. 152(5).

29. Mulroy, op. cit., loc. cit., at 596.

30. Wickard v Filburn, 1942, 317 U.S. 111; National Labor Relations Board v. Fainblatt, 1939, 306 U.S. 601; Mabec v. White Plains Pub. Co., 1946, 327 U.S. 178; Mandeville Island Farms v. American Sugar Co., 1948, 334 U.S. 219.

[Endorsed]: Filed May 26, 1949. [84]

[Title of District Court and Cause.]

MEMORANDUM IN OPPOSITION TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECREE AND TEMPORARY INJUNCTION

Come now Los Angeles Building and Construction Trades Council, Lloyd A. Mashburn, Millwright and Machinery Erectors, Local 1607 of United Brotherhood of Carpenters and Joiners of America, A.F.L., and Herman Barbaglia, respondents herein, and aver that petitioner's proposed findings of fact, conclusions of law and proposed decree do not conform to Rule 65 (d) of the Rules of Civil Procedure for the District Courts of the United States, which provide:

“Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint [85] or other document, the act or acts

sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.”

Respondents and each of them hereby object to the following paragraphs of the proposals:

I.

Respondents and each of them object to petitioner's description of the order as a temporary injunction (page 1, lines 27-28, et seq.), and hereby request that the following be substituted for the same, “interlocutory injunction,” or “injunction.” It is noted that the Rules of Civil Procedure do not refer to “temporary injunctions,” but do discuss “injunctions” (Rule 65), “interlocutory injunctions” (Rule 52), and “preliminary injunctions” (Rule 65). This objection is noted for the purpose of pointing out the distinction between the injunctive relief here sought and the temporary restraining order (Rule 65 (b) (e)), from which no appeal may be had.

II.

Objections to Petitioner's Proposed Findings of Fact

The sixth finding of fact, reciting as it does the filing of the amended charge dated April 15, 1949, injects into the case matters over which the court

has no jurisdiction because such matters were not considered by the National Labor Relations Board either at the hearing held before the Regional Director or before the Board itself resulting in the decision of the Board referred to in finding No. 8. It is only matter which the Regional Director had a right to exercise his official determination with respect to the issuance of a complaint that may be heard and determined in this [86] case. The evidence before the court and the decision of the National Labor Relations Board are confined to the matter presented to the Board in the 10 (k) proceeding and not more. At the time the second amended charge was filed the hearing in the 10 (k) proceeding had been finished and the matter was pending before the Board for determination. The Board in its decision (Footnote 8) specifically stated that it was confining its decision to matters presented to it in the 10 (k) hearing and was deciding no dispute except that one. So that all the matters contained in the charge of April 15, 1949, have not been considered by the Board nor has the petitioner instituted 10 (k) proceedings to hear and determine the additional matter therein contained.

Under the Board's rules and regulations, Series 5 as amended August 18, 1948, which are binding upon the petitioner as well as respondents, Section 203.74 through Section 203.77 requires that the issuance of any complaint by the Regional Director must be bottomed upon a determination made by the

Board after a period of time within which a settlement of the dispute may be accomplished.

As to matters in the charge of April 15, 1949, which were not included in the original or first amended charge, those matters have not been presented to the Board for determination and hence the Regional Director has not had authority to determine that a complaint should issue upon such matters, and therefore the encompassing of such matters in the findings of fact is contrary to the evidence and to the law.

The eighth finding of fact is objected to because it is a conclusion of law and not a finding of fact. It purports to be a condensation of the Board's decision under the 10 (k) proceeding, and is incomplete and inaccurate in that it does not show that the decision of the Board was restricted to the dispute which arose allegedly on or about February 2, 1949, and does not set forth the findings of the Board with respect to the rights of the International [87] Association of Machinists members and seeks to have the court find as facts matters which have not been heard and determined by the Board.

Finding No. 9 (a), (b), (c) and (d) is objected to as not being supported by the evidence in the case, and the conclusions are erroneous based upon such evidence as does exist in the case.

Finding No. 9 (e) is objected to as not being supported by the evidence and is contrary to the substantial evidence of the cause, which reveals

that the labor dispute is a protest action of respondents against the unfair labor practices being committed by Westinghouse and the International Association of Machinists. The substance of this finding is only a conclusion of law and merely a repetition of the allegations made by petitioner in his complaint. There is no specification as to the acts found and none are described in reasonable detail, and it is impossible to determine from this proposed finding just what acts are found by the court to constitute such conduct which would authorize the court to enjoin the same. The finding as presently proposed merely sets forth in statutory language the legal conclusions found in the Act. It is respondents' contention that this does not constitute a finding of fact and that such acts and conduct as the court has found enjoinable should be set forth by specification and in reasonable detail.

Respondents object to finding No. 9 (f) for the reason that there is absolutely no evidence before this court that the respondents or any of them have failed to comply with the decision and determination of the dispute of the Board in the proceeding arising under Section 10 (k) of the Act.

Respondents object to finding No. 9 (g) for the reason that it is not supported by the evidence.

Respondents object to finding No. 9 (h) for the reason that it is not supported by the evidence.

Respondents object to finding No. 9 (i) for the reason [88] that it is not supported by the evidence.

III.

Objections to Petitioner's Proposed Conclusions of Law

Respondents object to conclusion No. 1 as being contrary to the law and the evidence in the case.

Respondents object to conclusion No. 4 on the grounds that this honorable court does not have jurisdiction of the proceedings and of the respondents pursuant to the provisions of Section 10 (1) of the Act, or that it may grant any injunctive relief.

Respondents object to conclusion No. 5 as being contrary to the law and the evidence of the case in that Section 10 (1) and Section 8 (b) (4) (D) are unconstitutional and void, being in contravention of the First, Fifth and Thirteenth Amendments of the Constitution of the United States.

Respondents object to conclusion No. 6 in that Section 8 (b) (4) (D) is contrary to the First, Fifth and Thirteenth Amendments of the Constitution of the United States.

Respondents object to conclusion No. 7 in that petitioner violates Rule 65 (d) of the Rules of Civil Procedure hereinabove set forth, in that the application of the injunction is not limited to respondents, their officers, agents, servants, employees and attorneys and to those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, in that the conclusion sweeps within its ambit activities, classes and employees which the court has not

had before it and over which the court may not issue a valid or legal order. This is not a proper conclusion of law in that the conclusion, like the decree, must set forth "acts" in detail and not by reference to pleadings or findings. Related acts or conduct, indefinite and ambiguous, cover matters which have not been the subject of administrative requirements and the administrative provisions of the [89] Act have not been exhausted as required therein, and there is no evidence upon which such a conclusion may be based. No injunction should issue beyond the dispute which the Board heard and determined, for that is the only subject which can be litigated by the Board and brought to a final determination. The conclusion as here drawn blankets possible acts upon which there cannot possibly be a final determination within the purview of the administrative proceedings which gave rise to the instant petition.

IV.

Objections to Petitioner's Proposed Decree

Respondents object to petitioner couching the proposed decree in the language of the Act, which language is so vague and indefinite that it will be impossible for the petitioner and the respondents to know what conduct is allowed and what conduct is limited by the decree. Such proposed decree is contrary to Rule 65 (d) in that it does not specify the acts enjoined, nor does it describe them in reasonable detail, and the proposed decree is indefinite

and uncertain as to the act or acts sought to be restrained. There is no way that respondents can determine from this language what acts are permissible. The proposed decree does not describe with sufficient clarity what work is involved in the phrase "installing steam turbine generators." There are other classes and types of labor which are engaged and which will engage in the work of "installing steam turbine generators," such as electricians, riggers and pipefitters, all of whom perform integral parts in such installation. As the decree is now drawn the legal rights of the latter groups to perform their legal duties and to protect their legal rights are restricted along with the rights of others, and opens the ground for invasion of the Machinists into the types latterly mentioned without affording to the latter groups any protection of their legal rights to work.

The decree is further objectionable because it is broader than the dispute involved and decided by the Board, and unnecessarily restricts all legitimate rights of respondents and their members, and requires the members to work against their wishes and desires, prohibits their withholding their services for the protection of their own jobs and for other legitimate reasons. Further, it invades the right of speech communication and nullifies the rights guaranteed to the members of respondent unions under Sections 7 and 8 (c) of the National Labor Relations Act as amended.

The injunction should be confined to affirmative

orders issued subsequently to the injunction by the organizations as such. The proposed decree forbids the right to quit or withhold services of individuals, so that if two or more members quit at the same time the decree would be offended and subject such persons to contempt citations. The decree should further provide for the protection afforded under Section 8 (c) by excluding in its language acts which do not involve threats of reprisal or promises of benefit.

Respectfully submitted,

/s/ ARTHUR GARRETT,

Attorney for Respondents.

Receipt of a copy of this document on June 6, 1949 at 2:30 p.m. is hereby acknowledged.

/s/ JEROME SMITH,

Attorney for Petitioner.

Objections considered and overruled, except as indicated.

/s/ L. R. Y.,

Judge.

[Endorsed]: Filed June 6, 1949. [91]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on to be heard upon the verified petition of Howard F. LeBaron, Regional Director of the Twenty-First Region of the National Labor

Relations Board, on behalf of said Board, for a preliminary injunction pending final adjudication of the Board of the matters involved, and upon issuance of the rule to show cause why injunctive relief should not be granted as prayed in the petition. The Court has fully considered the petition, return, points and authorities, documentary evidence, affidavits and oral argument counsel presented at a hearing held herein. Upon the entire [92] record, the Court makes the following:

Findings of Fact

1. Petitioner is Regional Director of the Twenty-first Region of the National Labor Relations Board (herein called the Board), an agency of the United States Government, and has filed this petition for and on behalf of the Board.

2. Respondent Los Angeles Building and Construction Trades Council (herein called Council), an unincorporated association composed of eighteen (18) labor organizations engaged in the building trades industry, is a labor organization within the meaning of Section 2 (5) and 10 (1) of the Act, and is engaged within this judicial district in promoting and protecting the interests of its constituent unions and their employee members.

3. Respondent Lloyd A. Mashburn is, and at all times material herein has been, an agent of respondent Council engaged within this judicial district in promoting and protecting the interests of

respondent Council's constituent unions and their employee members.

4. Respondent Millwright and Machinery Erectors, Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L. (herein called Millwrights), an unincorporated association and a constituent union of respondent Council, is a labor organization within the meaning of Sections 2 (5) and 10 (1) of the Act, and is engaged within this judicial district in promoting and protecting the interests of its employee members.

5. Respondent Herman Barbaglia is, and at all times material herein has been, an agent of respondent Millwrights engaged within this judicial district in promoting and protecting the interests of respondent Millwrights' employee members.

6. On or about April 15, 1949, Local Lodge 1235 of the International Association of Machinists (herein called Machinists), an independent labor organization not affiliated with respondent Council, pursuant to the provisions of the Act filed a second amended charge with the Board to a charge filed originally on February 2, 1949, and amended on March 8, 1949, said second amended charge alleging that respondents have engaged in and are [93] engaging in unfair labor practices within the meaning of Sections 8 (b), subsection (4) (D) of the Act.

7. Said charge was referred to petitioner for in-

vestigation, who caused an investigation thereof to be made.

8. On May 11, 1949, the National Labor Relations Board issued a Decision and Determination of Dispute in a proceeding involving respondents arising under Section 10 (k) of the Act. In its Determination the Board held that the Los Angeles Building and Construction Trades Council, A.F.L., and Lloyd A. Mashburn, its agent, and Millwright and Machinery Erectors Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L., and Herman F. Barbaglia, its agent, are not, and have not been, lawfully entitled to force or require Westinghouse Electric Corporation to assign work on the installation of steam turbine generators at Southern California Edison Company's plant at Redondo Beach, California, to members of Millwright and Machinery Erectors Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L., rather than to employees of Westinghouse Electric Corporation who are members of International Association of Machinists, Local Lodge 1235. A copy of said Decision and Determination of Dispute was served on respondents on May 13, 1949.

9. There is, and petitioner has, reasonable cause to believe that:

(a) Westinghouse Electric Corporation (herein called Westinghouse), maintains, inter alia, two plants in the Commonwealth of Pennsylvania,

where it is engaged in the manufacture of turbines and generators. A substantial amount of the raw materials used in the production of these turbines and generators comes from outside the commonwealth of Pennsylvania. A substantial amount of the turbines and generators manufactured at these plants is sold to customers outside the Commonwealth of Pennsylvania.

(b) Southern California Edison Company (herein called Edison) is a utility company and delivers electric power to consumers in southern California. A substantial amount of its sales is to industrial consumers who are engaged in interstate commerce. A substantial amount of its purchases, including the turbine generators involved in this action, are [94] shipped to Edison from outside the State of California.

(c) Stone and Webster Engineering Corporation (herein called Stone and Webster) is a general contractor engaged in the construction business. Its construction activities are large scale, mainly commercial and industrial, and extend to every state in the United States.

(d) Edison is now engaged in the construction and equipment of a new steam turbine electric power generating station at Redondo Beach, California, the construction of which was begun in July, 1946, and the estimated completed cost of which is in excess of \$38,000,000. Stone and Webster has the general contract for the construction of the Redondo Beach station and for the past several

months it has had approximately 550 of its own employees working on the project. In addition, numerous employees of various subcontractors have been engaged on the construction project. Among these employees are members of substantially all the building trades unions affiliated with respondent Council. Some time prior to December 1948, Edison entered into arrangements with Westinghouse for the latter to furnish and install several steam turbine generators at the Redondo Beach station. On or about January 31, 1949, Westinghouse began the installation of one of the turbine generators, a 6,000 kilowatt unit, pursuant to its contract with Edison. To make the installation it used, inter alia, employees who were members of the Machinists.

(e) Respondents on or about February 2, 1949, and at all times since that date, have, by orders, directions and instructions, induced and encouraged employees of Stone and Webster, Westinghouse and other employers engaged at the Redondo Beach station to engage in a strike or concerted refusal in the course of their employment to transport or otherwise handle or work on Westinghouse products or to perform services for their employers in connection with the Redondo Beach project, an object thereof being to force or require Westinghouse to assign the work of installing the steam turbine generators at the Redondo Beach station to members of respondent Millwrights rather than to the employees of Westinghouse who are now members of the Machinists. [95]

(f) Respondents have failed to comply with the Decision and Determination of Dispute of the Board in the proceeding arising under Section 10 (k) of the Act as aforesaid and have not voluntarily adjusted the dispute out of which the unfair labor practice charge arose.

(g) Respondent's acts and conduct hereinabove mentioned constitute an unfair labor practice within the meaning of Section 8 (b), subsection 4 (D) of the Act.

(h) Respondent's acts and conduct hereinabove mentioned have a substantial relation to trade, traffic, and transportation among the several states and tend to lead to labor disputes burdening or obstructing the free flow of commerce.

(i) Respondents, unless restrained and enjoined therefrom, will continue to engage in the above acts and conduct or similar or related acts and conduct in violation of Section 8 (b), subsection 4 (D) of the Act and which tend to lead to labor disputes burdening or obstructing the free flow of commerce.

Conclusions of Law

1. Westinghouse, Edison and Stone and Webster are engaged in interstate commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

2. Respondents Council and Millwrights are labor organizations within the meaning of Section

2, subsection (5) and Section 10 (1) of the Act.

3. Respondent Lloyd A. Mashburn is, and at all times material herein has been, an agent of respondent Council, and respondent Herman Barbaglia is, and at all times material herein has been, an agent of respondent Millwrights, within the meaning of Section 8 (b) of the Act.

4. The Court has jurisdiction of the parties and the subject matter of this proceeding, and, under Section 10 (1) of the Act has authority to grant injunctive relief.

5. There is reasonable cause to believe that respondents have engaged in, are engaged in, and, unless restrained and enjoined therefrom, will continue to engage in, an unfair labor practice within the meaning of [96] Section 8 (b), subsection 4 (D) of the Act, affecting commerce within the meaning of Section 2, subsections (6) and (7) of the Act, and that a continuation of this practice will impair the policies of the Act as set forth in Section 1 (b) thereof.

6. Section 8 (b), subsection 4 (D) of the Act does not exceed the bounds of Congressional power to regulate commerce nor is this section violative of the First, Fifth or Thirteenth amendments to the Constitution.

7. Pending the final adjudication of the National Labor Relations Board with respect to the matters herein, it is just and proper that respondents, their

agents, servants, employees, attorneys, and all other persons acting in active concert or participation with them, be enjoined and restrained from the commission of the above acts and conduct or similar or related acts or conduct or repetitions thereof.

In accordance herewith an injunction shall issue forthwith against respondents as prayed, pending final adjudication of the Board of the matters herein.

Made and entered at Los Angeles, California, this 8th day of June, 1949.

/s/ LEON R. YANKWICH,
U.S. District Judge.

Receipt of a copy of this document on May 31, 1949 at 3 p.m. is hereby acknowledged. Disapproved as to form. Objection will be filed.

/s/ ARTHUR GARRETT,
Attorney for Respondents.

[Lodged]: May 31, 1949.

[Endorsed]: Filed June 8, 1949. [97]

In the United States District Court for the Southern District of California, Central Division

No. 9629-Y

HOWARD F. LEBARON, Regional Director of the Twenty-First Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board,

Petitioner,

vs.

LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL; and Its Agent LLOYD A. MASHBURN; MILLWRIGHT AND MACHINERY ERECTORS, LOCAL 1607 OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.; and Its Agent HERMAN BARBAGLIA,

Respondents.

DECREE

This cause came on to be heard upon the verified petition of Howard F. LeBaron, Regional Director of the Twenty-First Region of the National Labor Relations Board, on behalf of said Board, for a temporary injunction pending adjudication by the Board of the matters involved, and a rule to show cause why injunctive relief should not be granted. The Court upon consideration of the petition, return, points and authorities, documentary evidence, affidavits and oral argument of counsel for the parties, and after consideration of Respondents' objec-

tions to Petitioner's [98] proposed findings of fact and conclusions of law, duly made and entered its findings of fact and conclusions of law.

It is, therefore, by this Court,

Ordered, Adjudged, and Decreed that respondents Los Angeles Building and Construction Trades Council, Lloyd A. Mashburn, Millwright and Machinery Erectors, Local 1607, of United Brotherhood of Carpenters and Joiners of America, A.F.L., and Herman Barbaglia, and each of them, their agents, servants, employees, attorneys and all persons in active concert or participation with them, be and they hereby are, restrained and enjoined, pending the final adjudication by the National Labor Relations Board of the matters herein involved, from:

Engaging in, or inducing or encouraging the employees of Stone and Webster, Westinghouse, or any other employers, to engage in a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport or otherwise handle or work on any goods, articles or materials or commodities belonging to or utilized by Stone and Webster, Westinghouse or any other employer engaged on the construction project for Edison at Redondo Beach, California, or to perform services for Stone and Webster, Westinghouse, or any other employer on said project, where an object thereof is to force or require Westinghouse and/or Stone and Webster to assign the work of installing steam turbine generators to

members of respondent Millwrights, rather than to employees of Westinghouse who are now members of Machinists, or any other labor organization, unless respondent Millwrights is certified by the Board as the bargaining representative for the employees performing such work.

Dated at Los Angeles, California, within said District and Division this 8th day of June, 1949, at the hour of 10 o'clock a.m.

/s/ LEON R. YANKWICH,
U. S. District Judge.

Receipt of a copy of this document on May 31, 1949, at 3 p.m., is hereby acknowledged. It is approved as to form. Objections will be filed.

Judgment entered June 10, 1949.

/s/ ARTHUR GARRETT,
Attorney for Respondents.

[Lodged]: May 31, 1949.

[Endorsed]: Filed June 8, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court, the Petitioner Above Named, and to His Attorneys, Robert N. Denham, David P. Findling, Winthrop A. Johns, Charles K. Hackler, and Jerome Smith:

Notice is hereby given that Los Angeles Building and Construction Trades Council; and its agent

Lloyd A. Mashburn; Millwright and Machinery Erectors, Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L.; and its agent Herman Barbaglia, respondents herein, and each of them, hereby appeal to the Court of Appeals for the Ninth Circuit from that certain judgment entered in this action on [100] June 10, 1949, in favor of the petitioner and against respondents and granting an injunction against respondents, and from each and every part of said judgment.

Dated this 8th day of July, 1949.

/s/ ARTHUR GARRETT,

Attorney for Respondents.

[Endorsed]: Filed July 8, 1949. [101]

[Title of District Court and Cause.]

RESPONDENTS' EXHIBIT A

AFFIDAVIT OF ARTHUR GARRETT

State of California,

County of Los Angeles—ss.

Arthur Garrett, being first duly sworn, deposes and says:

That he is an attorney, duly licensed in the Courts of the State of California and in this Federal District Court, and is attorney for the respondents herein.

That pursuant to the provisions of Section 10-k of the National Labor Relations Act, as amended

Respondents' Exhibit A—(Continued)

June 23, 1947, (61 Stat. 136 et seq; 29 U.S.C.A. Sup. I Sec. 141 et seq) hereinafter called the Act, the National Labor Relations Board, hereinafter called the Board, conducted a hearing in Los Angeles, California, on March 10, 11, 14, 15, 17, 18, 21, 22, 23 and 24, 1949, before James V. Altieri, hearing officer designated to conduct said hearing by said Board, upon the charge and first amended charge attached to the petition herein, pursuant to a notice of hearing issued by said Board. That in said hearing evidence under oath, both oral and documentary, was adduced, and an official transcript made and returned to and filed with said Board, a copy of which is in affiant's possession. That in said hearing affiant represented Los Angeles Building and Construction Trades Council and Lloyd A. Mashburn, respondents here, and that affiant was present at all times during every session of said hearing at which evidence was taken. That the statements of witnesses set forth below were made at said hearing under oath, heard by affiant and reported in said transcript; transcript references are to that transcript. The attorneys whose names appear in the excerpts are Garrett, representing the two respondents as above mentioned; Smith, Jerome, representing the Board; Binkley, representing Westinghouse; Trautman, representing Stone and Webster; Smith, William French, representing Edison; and Ryder, and White, representing the International Association of Machinists, also known as I.A.M.

Respondents' Exhibit A—(Continued)

The Board designation of this case is 21 C.D. 19, and pursuant to said hearing and after taking briefs, the Board issued its decision on May 11, 1949, a copy thereof being received by affiant on May 13, 1949. [2]

EVIDENCE RELATING TO ALLEGED UN-
FAIR LABOR PRACTICE BY WESTING-
HOUSE AND INTERNATIONAL ASSOCI-
ATION OF MACHINISTS

WILLIAM L. BUDGE

Transcript, Volume III, page 264 to 272*:

“Q. Now, with respect to the section of installation employees below the supervising engineer, would you describe the method with which these employees are selected?

A. These employees are selected directly from the local unions, depending upon the craft desired.

Q. What craft unions do you go to to arrange for the supplying of installation employees?

Mr. Binkley: Just a minute. I am wondering if you could be a little more specific. In this case or throughout the United States, or——

Mr. Ryder: We are referring specifically to the installation work at the Redondo Beach plant.

Q. (By Mr. Ryder): To which craft unions did you apply for the supplying of installation employees?

*Machinists Exhibits 1-A, 1-B, 1-C, 5-A and 5-B attached hereto as Exhibits.

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

Mr. Garrett: That is assuming a fact not in evidence. There is no evidence that this witness filled any of those positions himself.

Hearing Officer Altieri: Just a minute, Mr. Budge. You testified, Mr. Budge, it was the practice on the job to select personnel, field engineers from the local union, depending on the crafts desired or needed.

Now, did you, in order to select personnel for the installation of the turbines on the Redondo Beach project, did you or anyone under your supervision apply to local unions for personnel on that job?

The Witness: That is right.

Q. (By Mr. Ryder): Which local unions—did you apply to the Machinists Union? [3]

A. Yes, we applied to the Machinists Union.

Q. Which local was that?

Mr. Garrett: I object. In spite of his answer to this question, this witness applied to anyone for employees—his response to your question simply was that he or men under his supervision made application.

Hearing Officer Altieri: Do you want to reframe your question?

Mr. Garrett: Objected to as assuming facts not in evidence.

Q. (By Mr. Ryder): Mr. Budge, do you personally engage in the hiring of installation employees for turbine-generator installation?

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

A. On one or two instances only have I gone directly to the union. It is usually carried out by Mr. Scanlon.

Q. Does Mr. Scanlon do the hiring under your direct supervision?

A. That is right. Either Mr. Scanlon or the engineer in charge of the particular job has the authority to hire or make arrangement for the hiring of the men.

Q. Does the supervising engineer or Mr. Scanlon consult with you with respect to the hirings?

A. They consult with me as to what groups we should hire.

Q. Is one of those groups Machinists?

A. Yes, sir.

Q. Is another of those groups Riggers?

A. Yes, sir.

Q. Is another of those groups Electricians?

A. Yes, sir.

Q. Is another of those groups Pipefitters?

A. Yes, sir.

Q. Now, you testified that on one or two occasions you have personally contacted the supplying source for these groups. With respect to those occasions, that either the one or both occasions, you refer to hiring of Machinists?

A. On one occasion, yes.

Q. When was that?

A. I don't recall what occasion. It was early in 1946. [4]

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

Q. Whom did you contact with respect to the supplying of labor.

A. I contacted someone in the Machinists organization, asking that we have additional men sent on the job.

Q. With respect to organization, was that a local of the Machinists Union? A. Yes, sir.

Q. Which local was that?

A. That was the Long Beach local.

Q. Do you know the number of that local?

A. No, I don't.

Q. Who was the individual that you contacted early in 1946?

A. For the specific purpose of hiring men, I don't recall who the individual was.

Q. Could it have been Mr. Floyd Smith, the business agent of the Long Beach local?

A. It could have been.

Q. Now, referring to the No. 2 House Unit, which is the unit involved in this—the start of the dispute that lead to the work stoppage—did you arrange for the providing of installation machinists on that unit?

A. No, I did not personally.

Q. Who did? A. Mr. Scanlon.

Hearing Officer Altieri: When was the work started on the installing of the unit?

The Witness: As I recall, it was January 31st or February 1st.

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

Hearing Officer Altieri: 1949?

The Witness: Yes, sir.

Q. (By Mr. Ryder): Mr. Budge, did it at any time since the installation work by Westinghouse—since the start of the installation work at Westinghouse, or by Westinghouse at the Redondo Beach plant, at any time have you discussed with Mr. Smith wages and working conditions, wages and hours and working conditions for installation machinists that would be supplied by the Long Beach local?

Mr. Garrett: That is assuming a fact not in evidence, his [5] contact with Mr. Smith.

Hearing Officer Altieri: Did you have any conversations with Mr. Smith on the subject?

A. Will you restate the first part of the question, please.

(The question was read.)

The Witness: That is, at any time, not this particular job?

Q. (By Mr. Ryder): Yes, at any time.

A. Yes, I have discussed with Mr. Smith wages and hours for Machinists at the Redondo steam plant.

Q. Do you recall when you first did?

A. There were discussions held from the time that we started in December of 1947. When we started on the first 60,000 kilowatt unit.

Q. Do you remember the substance of that conversation?

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

A. The only substance I remember was rates and hours with regard to multiple shift work.

Q. Do you remember any subsequent conversations with respect to rates and hours with Mr. Smith?

A. Yes, from time to time I have discussed with Mr. Smith rates and hours prevailing at that time or prevailing in the future.

Q. Did you at any time exchange correspondence with Mr. Smith concerning rates and hours?

A. We have received several letters from Mr. Smith stating rates and hours.

Q. Do you have those letters present with you in the hearing room?

A. I think Mr. Binkley has those letters.

Mr. Ryder: May I see those letters, Mr. Binkley?

Mr. Binkley: Yes.

Mr. Ryder: Do you have the original of this letter of December 29th, addressed to Mr. S. M. Scanlon, Mr. Binkley?

Mr. Binkley: It is in the office at Pittsburgh or Philadelphia.

Mr. Ryder: Mr. Examiner, I have here a copy of a letter of [6] December 29, 1947, addressed by Floyd E. Smith, business representative, to Mr. S. M. Scanlon, the Westinghouse Corporation. Also have a copy—evidently the original, as Mr. Binkley states, is some place in the records of the company's offices, perhaps in the east.

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

I would like to introduce a photostatic copy of this letter, the company's copy.

Hearing Officer Altieri: I don't think you laid a foundation for the introduction of the evidence. I am sure no serious objection will be urged as to the fact they are copies rather than originals.

Mr. Binkley: I am going to object to the introduction. The fact they are copies, I have no objection to that.

Mr. Garrett: I have no objection to the introduction of the letters.

Mr. Binkley: I would like to be enlightened at this time on the purpose of this offer of proof and the necessity for establishing these conversations between the I.A.M. and Westinghouse. We already testified there were conversations. I assume this is going to be an effort to prove some kind of a contractual relationship between the I.A.M. and Westinghouse.

I would like to know what the purpose and the materiality of the testimony at this time.

Mr. Ryder: Mr. Examiner, it is my intention to offer into evidence written communications between the Westinghouse Corporation and local unions, exchange of communications, for the purpose of indicating a continuing relationship—

Hearing Officer Altieri: Apparently, there is going to not be any objection predicated on the authenticity of the documents. I have heard only one, going to the materiality of them.

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

May I see them?

Mr. Ryder: Yes, surely. These are communications that were addressed by the union to representatives of the Westinghouse [7] Corporation.

Mr. Binkley: I withdraw any objection to the introduction of those letters.

Hearing Officer Altieri: I was frankly going to receive them. Will you have them marked for identification."

WILLIAM L. BUDGE

Transcript, Volume III, page 274 to 278:

By Mr. Ryder:

"Q. Mr. Budge, you have testified previously that you have engaged in some conversations with Mr. Smith with respect to hours and rates, and we have introduced into evidence some communications from Mr. Smith to Mr. Scanlon and Mr. Long of your company, with respect to hours and rates.

Do you consider these conversations and these communications evidence of any agreement, at least an oral agreement, with respect to hours and rates, the International Association of Machinists, Local Lodge 1235, represented by Mr. Floyd E. Smith—

Mr. Binkley: I am going to object to that on the ground it is calling for a conclusion of law.

Hearing Officer Altieri: I will sustain the objection to the question.

Mr. Garrett: May the record show we make the same objection?

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

Hearing Officer Altieri: Yes.

Q. (By Mr. Ryder): Mr. Budge, has the Westinghouse Corporation been governed by the terms and conditions in these communications that are now in evidence, with respect to the employment of machinists from Local Lodge 1235?

Mr. Binkley: I am going to object again on the ground of the use of the phrase 'be governed.' I think it calls for another conclusion of the witness. We are perfectly willing to stand on the conversations we have had and the correspondence we have exchanged [8] with the union.

If the question is have they paid the wage rates mentioned in those letters, that are already in evidence, certainly, I will permit him to answer that.

Mr. Garrett: The question of have you been governed always calls for a conclusion. I object on that ground.

Q. (By Mr. Ryder): Have you observed and paid the wage rates and other conditions set forth in those exhibits?

Mr. Garrett: Same objection. He can't testify as to what he did with reference to a document; he can only testify about what his company did.

Hearing Officer Altieri: Overruled.

Mr. Binkley: I want to make the objection that I think this is an indirect method of getting a statement from this witness that, in his opinion, there is some kind of a contract existing between the Westinghouse and the I.A.M.

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

If the Board, after hearing the evidence, the conversations between Westinghouse and I.A.M. and the letters wants to rule that in this proceeding, so far as it is concerned, there was an oral agreement, that is all right with me.

But I don't think that we should put this witness in the position of binding himself by some admission which is an admission of the company, since he is an agent of the company, and he considered this to have been some sort of a contract.

Hearing Officer Altieri: The last question was whether he as a supervisor observed these conditions, whether he lived up to the conditions contained in these letters, in the employment of the Machinists.

Is that the question?

Mr. Ryder: That is right.

Hearing Officer Altieri: I will allow him to answer. You have an exception. [9]

Mr. Garrett: The trouble with that is there is no evidence that this witness knew about these letters at the time they are dated. The bare evidence here upon which the production of these letters was permitted was that as to two of them, he had knowledge of their being in the files of Westinghouse Company. The other I think, the foundation was somewhat more indefinite than that. He can't testify——

Hearing Officer Altieri: The question is sim-

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

ply, Mr. Garrett, whether the company has, in fact, paid the Machinists in accordance with the terms that are contained in these letters.

I think the witness may answer whether he even knows the letters were in existence at the time or not.

Mr. Garrett: We want our objection noted. We think that calls for a conclusion.

Hearing Officer Altieri: You have your objection and exception.

Q. (By Mr. Ryder): Will you please answer the question?

A. To my knowledge they have been. So far as wages and hours are concerned."

WILLIAM L. BUDGE

Transcript, Vol. V, pages 333 to 335:

By Mr. Garrett:

"Q. Did you make the original labor arrangements for the installation of the first unit?

A. The Westinghouse Company did.

Q. The Westinghouse Company did?

A. Yes, sir.

Q. I presume you didn't personally make those arrangements, is that right?

A. I personally didn't make the arrangements for the men on the job.

Q. Now, your engineer on the job was D'Antoni?

A. That is right. [10]

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

Q. And your supervising engineer there was Skaggs? A. Mr. Scanlan.

Q. Mr. Scanlan? A. Yes.

Q. I suppose then, so far as you know, the labor involved in the installation of the first unit was arranged for by one or the other of them, is that correct? A. That is right, sir.

Q. Did you give them any directions as to how they were to arrange to get that labor?

A. Yes, sir.

Q. Did you give them those directions as a result of any directives that had been given to you or, as a matter of your own judgment?

A. As a matter of my own judgment.

Q. In other words, you exercised your discretion in that matter? A. That is right.

Q. In the installation of the first unit, what unions did you have Mr. Scanlan or Mr. D'Antoni contact?

A. On the installation of the first 60,000 kilowatt unit I had them contact the union that represents the riggers, or iron workers, the union that represents the pipe fitters and the union that represents the machinists, and the union that represents the electricians.

Q. In other words, you had them contact the Iron Workers, the I.B.E.W., the United Association, that is, the Pipe Fitters, and the I.A.M., is that correct?

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

A. The I.B.E.W., I assume, is the Electrical Union?

Q. That is right. A. Yes." [11]

WILLIAM L. BUDGE

Transcript, Vol. V, pages 343 to 346:

"Q. Now, I think you stated the other day on your direct examination that when Mr. Barbaglia demanded that Millwrights be put on the work you were doing you told him, in effect, that couldn't be done without the consent of the Southern California Edison Company.

Mr. White: I object to that question as assuming a fact not in evidence. I don't remember any testimony of this witness that Mr. Barbaglia made any demand on him to put Millwrights on the job. I believe he called him on the phone and they had a conversation.

Hearing Officer Altieri: I will sustain the objection. I think that is true.

Mr. Garrett: No. It was in connection with the telephone conversation he had with Mr. Mashburn.

Q. (By Mr. Garrett): You told him, I believe, that the men you were using couldn't be replaced with Millwrights, at least, until you consulted Southern California Edison? Is that about what the conversation was?

A. As I recall, the conversation was something like this: That I felt I could not change the craft at the present time, unless it was—unless I was in-

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

structed to by the customer, as it would impair other jobs I had in operation.

Q. For the customer?

A. Not for the customer. I didn't make that statement.

Q. What do you mean by saying it would impair other jobs you had in operation?

Q. The Southern California Edison Company is not the only company that we are doing installation work for.

Q. You are installing, in other words, equipment for other customers than the Southern California Edison Company at the [12] same time, is that correct?

A. That is correct.

Q. You feared if you hired on the Southern California Edison job to do the installation work members of any other union than the I.A.M. that the I.A.M. might undertake reprisals against the Westinghouse Company on these other jobs, is that what your meaning was?

The Witness: I would like you to state that again. Would you read it back to me?

(The question was read.)

Mr. Binkley: Is that material? I object to it on that ground.

Mr. Ryder: I object to that question. There is no foundation in the direct testimony that Mr. Budge gave concerning this implied type of information that Mr. Garrett desires of this witness at this time on cross-examination.

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

Hearing Officer Altieri: Have you gentlemen fully stated your objections?

Mr. Ryder: Yes.

Hearing Officer Altieri: The objection is overruled.

The Witness: I would like to answer that question in this manner: That you state that I could not or would not hire any other unions. But we had other unions on the job, at the present time. Other unions on the job at the present time. And as far as fear of reprisals was concerned, we have no fear of reprisals. I don't know what your meaning of 'reprisals' is. That could mean anything.

Q. (By Mr. Garrett): Let me put it this way:—

Hearing Officer Altieri: Let's not go too deeply into this. Only answer in relation to what you meant when you made that statement to Mr. Mashburn.

The Witness: I meant we had Machinists employed on other jobs [13] and that possibly action would be taken on those other jobs.

Q. (By Mr. Garrett): By the I.A.M.?

A. I didn't know who it would be by, but I disliked to start to rock the canoe in the middle of a job.

Q. In other words, it was more like this: If you replaced the I.A.M. people with Millwrights on the Southern California Edison job and started

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

the procedure of replacement, you anticipated, of course, that it might be necessary to carry through the policy of replacement on the job.

Mr. Ryder: I object again to the question. We are going into quite a field of speculation on this cross-examination.

Hearing Officer Altieri: Have you finished, Mr. Ryder?

Mr. Ryder: Yes.

Hearing Officer Altieri: Overruled.

The Witness: Well, there is another point, of course, that was in my mind. Not being aware of all the intricacies of unfair labor charges, as long as I had hired a particular craft, I must have in at least my own estimation some well founded reasons for discontinuing the work of that craft, unless the work was unsatisfactory."

WILLIAM L. BUDGE

Transcript, Volume V, pages 377 to 378:

"Q. (By Mr. Garrett): Do you recall a conversation you had with Lloyd Mashburn about February 1st of this year? A. Yes.

Q. You testified about it on direct examination on Monday? A. Yes.

Q. Do you recall? A. Yes.

Q. Did you tell him that to change from Machinists to Millwrights would affect other jobs that you had going on at the time?

A. I told him that I felt a changing would im-

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

pair other jobs that I had going on at that time.

Q. And they were jobs other than the Edison job, is that right? A. That is correct.

Q. Well, did you tell him definitely that you would not replace the I.A.M. people with Millwrights, or did you tell him that you would have to talk to Edison Company about it?

A. I neither told him I would or I would not. I told him that to change labor it would have to be from a request by the Southern California Edison Company.

Q. Did you tell him you would take it up with them or was the matter just left that way?

A. The matter was just left that way."

WILLIAM L. BUDGE

Transcript, Volume V, pages 407-412.

By Mr. Garrett:

"Q. It is a fact, is it not, that throughout the installation work at the Redondo Beach steam plant, on the work in dispute between the Millwrights and the I.A.M., you hired members of the I.A.M. to do that work exclusively?

A. Well, no one has explained to me and I am not—just what work you are referring to, as to nuts and bolts and pipe and electrical connections?

Hearing Officer Altieri: Mr. Budge, don't you know the work involved in the dispute between the Millwrights and the Machinists?

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

The Witness: I don't know how far these people intend to carry this thing out.

Mr. Ryder: Mr. Examiner, we are intending to use an expert, Mr. Scanlan, for the testimony on this work, who is in direct supervision, for a thorough examination as to what the work there is a dispute about.

Hearing Officer Altieri: We are splitting hairs in relation to Mr. Garrett's question. What he is trying to find out is you [15] didn't use Millwrights, you used Machinists.

The Witness: That is correct.

Hearing Officer Altieri: You didn't use Millwrights on your installation work, did you?

The Witness: No, sir.

Q. (By Mr. Garrett): You used Machinists exclusively then, didn't you?

Hearing Officer Altieri: Well, that gets us back into the controversial aspect of it. Why don't you consider your question as to it?

Q. (By Mr. Garrett): Did you have any deal with Smith not to use any men except his?

A. No, sir.

Mr. Ryder: I object to that.

Hearing Officer Altieri: It has been answered, Mr. Ryder.

Q. (By Mr. Garrett): It just happened you didn't hire any men except from Smith to do that particular type of work?

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

Mr. Binkley: I object to that as argumentative.

Hearing Officer Altieri: Sustained.

Q. (By Mr. Garrett): Did you ever consider for the doing of any of that work of setting or installing your turbo-electric generators the hiring of any men from anyone except through Mr. Smith's union?

Mr. White: That has been asked and answered about four times; repetition.

Hearing Officer Altieri: Go ahead and answer, if you can.

The Witness: We made a decision to use a particular type of men who proved satisfactory, so there was no reason to do otherwise.

Hearing Officer Altieri: Mr. Garrett, is this further questioning in relation to the material that was brought out on redirect, or are you now launching a new cross-examination?

Mr. Garrett: It relates to the redirect. [16]

Hearing Officer Altieri: All right.

Q. (By Mr. Garrett): So you made a decision, you say, to use men supplied by the I.A.M. When did you make that decision?

Mr. Binkley: Wait a minute. Let's have the question read.

(The question was read.)

The Witness: Our using Machinists started in January or February of 1946, on prior jobs.

Q. (By Mr. Garrett): Is that when you made

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

your decision to hire Machinists, members of the I.A.M.?

A. That is when we hired I.A.M. for the first time, when I hired them for the first time.

Q. Thereafter, you never hired members of any other union to do that work?

Hearing Officer Altieri: Are we going to get back in that matter? We debated a little bit before about that, Mr. Garrett. By "work" you mean the work your Building Trades Council considered Millwrights work?

Mr. Garrett: That is right.

Q. (By Mr. Garrett): Do you understand in general the work of setting and installing the machinery?

A. We have used Machinists from that time on.

Q. Did you ever communicate the fact that you were going to use Machinists only from that time on to any member of the Machinists Union?

A. No, sir, I did not.

Q. But you told Mr. Mashburn you couldn't change that practice, at least you couldn't until Southern California Edison might intervene?

Mr. Binkley: I object to that as having already been asked and answered.

Hearing Officer Altieri: Objection sustained.

Mr. William Smith: I object to it as contrary to the evidence. [17]

Hearing Officer Altieri: Sustained.

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

Q. (By Mr. Garrett): Now, I take it that in deciding to use members of the I.A.M. on that installation work you disregarded entirely the union affiliation of the other men who might be working on the job for Stone and Webster or their subcontractor?

Mr. White: I object to that.

Hearing Officer Altieri: Sustained. What are we going to start trying, an unfair labor practice case against Westinghouse, Mr. Garrett?

Mr. Garrett: Well, I think that anything that tends to show a form of collusive action between the complaining union and the complaining employer here——

Mr. Ryder: Mr. Examiner,——

Hearing Officer Altieri: Just a minute. Let him finish.

Mr. Garrett: ——might be relevant. I think it might be relevant to inquire into that.

Hearing Officer Altieri: The last previous question, I believe, was objected to and the objection was sustained. Let's carry on.

Mr. Garrett: I want to say, after all, a jurisdictional strike, the provisions of the Act are not, I don't believe, designed to assist employers to get away with unfair labor practices.

Hearing Officer Altieri: I would agree with that.

Mr. Binkley: I would like to say that if it is collusive of the employer, without any contract with

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

any union, to hire what labor he thinks can best do the job, then I am afraid we will have to stipulate to it.

Mr. White: Particularly, in view of the activity of Mr. Garrett's client.

Hearing Officer Altieri: All right, gentlemen. Go ahead.

Q. (By Mr. Garrett): Did you make any inquiry whether or not there existed other sources of competent labor for doing your particular type of work? [18]

A. Of course, when we started this installation work in 1946 I checked with other manufacturers of similar equipment, to see who had been doing the work over the past number of years, which, of course, has a lot to do with what type of people you hire. To my knowledge the Machinists Union had been exclusively.

Q. Now, which other manufacturers of similar equipment did you check with?

A. Well, we checked with the G. E. Company. And we checked with Allis-Chalmers Company.

Q. Just the two? A. Yes.

Hearing Officer Altieri: Did you deny employment to anyone on this job because of his union affiliation?

The Witness: No, sir.

Q. (By Mr. Garrett): You didn't hire anybody but members of the I.A.M. on the particular work in

(Testimony of William L. Budge.)

Respondents' Exhibit A—(Continued)

dispute between them and the Millwrights, did you?

Mr. White: There is no evidence in this record to show that to be a fact; that assumes a fact not in evidence.

Hearing Officer Altieri: Don't argue it, Mr. White. If you have any objection to make, make it.

Mr. White: I object on the ground it assumes a fact not in evidence.

Hearing Officer Altieri: I will sustain the objection to the question.

Q. (By Mr. Garrett): Now did you have any conversations with any representatives of the other A.F.L. trades about the Machinists working for you?"

SAUL M. SCANLAN

Transcript, Vol. V, pages 417-433:

By Mr. Ryder:

"Q. Will you please state your name and address?"

A. Saul Scanlan. 153 Corona Avenue, Long Beach, California. [19]

Q. By whom are you employed?

A. Westinghouse Electric Corporation.

Q. What do you do?

A. Field supervising engineer. My work is in connection with the service and erecting of new machinery in the field, working out of Southern California, Los Angeles office.

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

Q. What type of machinery does that cover, Mr. Scanlan?

A. That covers Turbo-generators, heat exchangers, marine propulsion and auxiliaries and et cetera.

Q. How long have you done this work?

A. I entered the employment of the Westinghouse Company January 6, 1927.

Q. Has your employment been continuous with Westinghouse from that date until the present date?

A. There were two breaks. One time when I was on an absence of leave in 1940, until the day war was declared, as general superintendent of the Gulf Engineering Company in New Orleans.

The day war was declared I was instructed I would have to sever my relations and return. I returned as the marine supervisor for the Gulf area, working out of the Atlanta office, of Westinghouse Electric Corporation.

Q. Your war service work was with Westinghouse, as your employer, is that right?

A. That is right, except another break of nine months in 1943, I think, from about November 1943 until September, I guess it was, of '44. At such time I was assistant machinery superintendent in the Kraft Shipyards in Philadelphia, Pennsylvania.

Q. As assistant machinery superintendent, what were your duties there?

A. My duties were the erection of all machinery

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

and ordnance, guns, propulsion machinery, anything in the mechanical line. [20]

Q. Did that also include the erection and installation of turbines?

A. The erection of turbines, generators, gears and et cetera.

Q. When were you assigned by Westinghouse to the Southern California area?

A. I rejoined Westinghouse Company in November, November 1, 1944. I reported to our San Francisco office for two months, with instructions that I was to report in the Los Angeles area as soon as we had opened this office, as a district office.

Q. What about the date, about what date did you come to this Los Angeles area, Mr. Scanlan?

A. I think it was February 1, 1945.

Q. Has your work been confined to this area since February 1, 1945?

A. That is right.

Q. Now, will you briefly describe your work in this area? What type of work have you done here?

A. Well, the first part of my time here was in — a big part was in connection with the marine work in the progress of the war, in the shipyards, supervising over the erecting engineers and repairs to damaged ships and machinery.

Also, central and industrial work. Industrial meaning the small machines in the industries throughout Southern California, in this area.

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

Q. What type of machines would those be?

A. They were in all cases turbines, turbo-generators, turbo-mechanical drives, condensers or heat exchangers.

Q. Were those machines in general Westinghouse products, manufactured by Westinghouse?

A. In every case they were Westinghouse products.

Q. What installation work have you done since you have been [21] in the Los Angeles area with respect to steam turbine generators in power plants?

A. The first job would be the house unit in the harbor steam plant, City of Los Angeles.

Q. Could you specify the date, if you can?

A. I would rather not, because I can't give you the exact date; I don't know.

Q. The early part of a certain year, perhaps?

A. I would say it would be 1946. I don't know, maybe March or April; somewhere in the spring, I think.

Q. How many installations were involved in this harbor steam plant?

A. How many to date at this particular time?

Q. How many to date have you supervised in the harbor steam plant since you originally started there?

A. Five units all told; two small house units rated about 4,000 kw and one rated at 65,000 kw, 3,600 rpm, tandem compound machine.

Respondents' Exhibit A—(Continued)
(Testimony of Saul M. Scanlan.)

Two 75,000, one of which is in the process of being erected at this time; 1,800 rpm, 75,000 kw rating.

Q. These were all new installations?

A. These were all new installations.

Q. With reference to the harbor steam plant, did you also supervise any repair work connected with the turbine generators? A. Yes.

Q. How many would you estimate?

A. Well, normally, we probably have three or four repair jobs going on at the same time of each erection. It varies considerably. We may have four one day and nothing the next day, and more than we can handle the following day.

Q. Mr. Scanlan, have you done any supervising with respect to the installation or repair of turbine generators in any other [22] steam power unit or plant? A. In my time with the company?

Q. In the Los Angeles area.

A. In the Los Angeles area, yes.

Q. Which was that?

A. The Redondo Southern California Edison Steam Station. Two units, one of 60,000 kw, 3,600 tandem compound machine. And one of 6,000 complete expansion quick start kw machine. We began the second unit, which is the question at bar now——

Q. By the 'second unit' you mean the second house unit concerning which this dispute is about?

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

A. I mean the second unit.

Q. In connection with the first large unit and the first house unit, did your supervision involve the period from the original installation until the completion of those units? A. It did.

Q. Calling your attention to the second house unit, did your installation assignment involve the original start of the work on that unit?

A. It did.

Q. For how long a period did your supervision on the second house unit continue?

A. It seems to me like we started to get some leveling plates around Thursday or Friday, one or two days of that week, and the machinery arrived on the plant site over the weekend, I think. We attempted—no, it had——

Q. Could you state what weekend that was, in terms of dates, if possible?

A. It seems to me like that was about January 28th; I am not too sure.

Q. Your work continued up till then, with that unit?

A. Until a Tuesday, that is—no. On a Tuesday I was [23] called to the plant site. Our work continued about a week on after that Tuesday, I would say, following.

Mr. Binkley: What year are we talking about?

Hearing Officer Altieri: Do you want to fix dates

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

you think he may have trouble with? Why don't you show him that calendar?

Q. (By Mr. Ryder): I have a calendar here, Mr. Scanlan. Were you in the hearing room here when there was some testimony given as to the start of the installation work of the second house unit on January 31, 1949? A. Yes.

Q. To your recollection could that be the date that your supervision, your supervisory work started on that second house unit?

A. Well, my work is lots of preliminary work that enters into it. I was speaking of my actual work, rather than the erecting engineer's time, when he starts.

I may visit a plant site and discuss the job with the people charged with the responsibility. But in the main, before I assign the engineer to do the job with the men and materials—it is all preliminary, so when he comes he can go ahead with his job.

Q. Does your preliminary work prior to the actual start of the installation involve the hiring of crafts employees to do the installation work?

A. It does.

Q. Directing your attention now to the first unit, which I believe was the 60,000 kilowatt unit, when did you start making arrangements for the hiring of employees for that installation work?

A. Well, if you consider the preliminaries would

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

be on the completion of the second unit in the Harbor steam plant, which was completed, I would estimate some four or five months, [24] maybe, before, at such time our preliminaries were with the Machinists to check the tools, tools damaged, to give us a list and what we would require, and what they thought we should require so we might get prepared and be ready to begin the erection of the Redondo machine on its arrival at the site.

Q. Could you place that in terms of date, if possible, Mr. Scanlan? Perhaps we can determine something by terms—when did the actual installation work start on the first unit?

A. That started about November, sometime the first of November. It seems to me—

Q. Of what year? A. '37.

Q. 1947, you mean? A. '47.

Q. At that time did you contact unions with respect to employing the help, employees that would be necessary to the installation work?

A. I think some three or four weeks before the actual erection of this unit started I either called Mr. Smith or met him on a job site somewhere and appraised him of the fact that we intended to begin this job as soon as material arrived, and that I would require men of certain qualifications.

I asked him to keep his eyes open and try and have those men available at that time.

Respondents' Exhibit A—(Continued)
(Testimony of Saul M. Scanlan.)

Q. That would be sometime in November of 1947, would you say?

A. That would be somewhere around in October, I would say.

Q. What did Mr. Smith say at that time?

A. He told me I should have the most of the former men who had worked with me, who had expressed a desire to come back on a job, and if there was any changes they were glad to make them for me. [25]

Q. By 'former' men who did you mean?

A. Former machinists.

Q. Who had worked with you where?

A. On the harbor steam job. That is, the City of Los Angeles plant.

Q. Had you contacted Mr. Smith or anybody from the Machinists Union with respect to hiring Machinists for the harbor steam installation?

A. Yes, on the first unit.

Q. When was that?

A. It was in the spring of 1946 sometime, I think.

Q. How did you make that contact, Mr. Scanlan?

A. As I recall, a Mr. Drew was our steam supervisor in Mr. Budge's position at that time.

I made a call to the Machinists Local and made an appointment with Mr. Smith to go in and talk to him.

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

The idea was at the time we, knowing we were going to have this machine to erect, as the machine was sold sometime previous, labor costs had risen and we were trying to get the best qualified man to do the job in the smallest and shortest time.

Working on that assumption, we needed Machinists. The natural presumption was to go to the Machinists local for that man, that class of man.

Q. Do I understand you and Mr. Drew—

A. Yes.

Q. —met with Mr. Smith, is that right?

A. That is right; in the local.

Q. Did you describe to Mr. Smith the type of men you needed? A. We did.

Q. Did Mr. Smith say he could supply those type of employees?

A. He said he could supply—he had those men available and could supply them. [26]

Q. Did he supply those employees?

A. He did.

Q. For all the units in the harbor steam plant, you have previously mentioned?

A. All the harbor steam units or any of the erecting jobs in this local vicinity. That would be Redondo and harbor steam plants.

Q. Now, referring you again to yours and Mr. Drew's first meeting with Mr. Smith, did you at that time discuss hours and rates of pay?

A. We most certainly did.

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

Q. Have you at any time since that date discussed with Mr. Smith hours and rates of pay?

A. Yes, I have, on various occasions. I think there were two raises since 1946, at which time we discussed these increases. I informed Mr. Smith at his local to write a letter to that effect, and if the prevailing wage in this locality was being paid by other people doing the same work we had no other alternative but to comply.

Q. Did Mr. Smith supply those letters, to your knowledge? A. He did.

Q. I would like to show you copies of letters of Machinists Exhibits 1-A and 1-B, and ask if these are the letters you are referring to?

A. That is one letter (Indicating).

Q. That is one? A. That is one.

Q. That is 1-B.

A. This is another one, 1-A.

Q. 1-A is another one.

A. I knew of this letter, but I didn't receive a copy (indicating). I knew it was coming through. I think it came through at my request.

Q. That is the letter Exhibit 1-C, addressed to Mr. Long of [27] the accounting department?

A. Yes. I think it was at my direction it was mailed to Mr. Long.

Q. Your relationship with Mr. Smith, has it been a continuing one from your first contact when

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

you and Mr. Drew met with him, up to the present time, in terms of supplying labor?

A. It has been.

Q. Has it been a continuing one in terms of adjustments with respect to rates and hours?

A. It has been.

Q. Now, Mr. Scanlan, did any representative of any labor organization, other than the Machinists Union ever contact you with respect to your employing members of those organizations on that Redondo steam plant installation?

A. Other than the normal trades or crafts that we normally use, namely, Machinists, the Pipefitters, Riggers, the Electricians.

Q. Did the Pipefitters Union ever contact you with respect to requesting the work being done by the Machinists, to be reassigned to them?

A. No.

Q. Did the Ironworkers Union ever make such a request? A. No.

Q. Did the Electricians Union make such a request? A. No.

Mr. Binkley: I object to these questions. I think they are irrelevant and immaterial.

Hearing Officer Altieri: All right. I suppose he is done with them now. I think he is trying to anticipate something, Mr. Binkley. I am not sure. Go ahead, Mr. Ryder.

Q. (By Mr. Ryder): Did any union make any

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

request with respect to the work being done by the Machinists Union?

A. Except the case we are discussing here now.

Hearing Officer Altieri: What month of this year and what week? [28]

Q. (By Mr. Ryder): Are you referring now to the second house unit?

A. I am referring to the second house unit.

Q. There was a request by some other organization with respect to the second house unit?

A. The request was put in by way of a telephone message to me at the harbor steam plant, by our erecting engineer, Mr. Paul D'Antoni, regarding some anticipated labor trouble.

Q. What date was that, do you remember? The installation was started on January 31st.

Hearing Officer Altieri: By looking at a calendar, will it help you?

Q. (By Mr. Ryder): Will looking at a calendar help you, Mr. Scanlon?

A. It might. I would say that would be February 2nd.

Q. Do you remember the work stoppage took place with respect to the second house unit?

A. I arrived on the plant site——

Q. No, Mr. Scanlan, February 2nd, previous testimony has elicited that February 2nd was the date of the work stoppage. I wanted to know about what time prior to the work stoppage did you first

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

have information about a claim for machinists' work on the second house unit?

Mr. Garrett: In other words, any answer is all right, so long as it is one of two dates; 1st or 2nd.

Mr. Ryder: Mr. Garrett can object if he wants. I will rephrase my question, if it will help.

The Witness: I will have to answer your question by stating I drove over to the plant site somewhere about 1:00, 2:00 o'clock in the afternoon. Whereupon, I met our erecting engineer, Mr. Paul D'Antoni, out in the yard and instructed Mr. D'Antoni what was taking place. He informed me briefly that some of the other [29] trades were going to walk off the job, unless the Machinists were taken off.

Whereupon, I asked Mr. D'Antoni to accompany me to Mr. Sheets' office or Stone & Webster. On arriving in his office I was greeted by Mr. Sheets, who said to Mr. Barbaglia—

Q. Who is Mr. Barbaglia?

A. He told me he was the business agent of the Carpenters, Millwrights Local.

Hearing Officer Altieri: Local 1607? Do you know, Mr. Scanlan? Is that Local 1607?

The Witness: I don't know the number.

Q. (By Mr. Ryder): It is, as a matter of fact.

A. He addressed me by saying, 'Here is the man you want to talk to.'

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

He says, 'What are you going to do about the Machinists on the job?'

Q. (By Mr. Ryder): Mr. Barbaglia was talking to you?

A. Mr. Barbaglia was talking to me, yes. I answered him by saying I didn't know. I had no idea what he was referring to, in the first place.

I said, 'The Machinists are men who have worked with us, who have proven themselves qualified to do this type of work, and until and at such time as I am instructed otherwise, they shall continue.'

Whereupon he says, 'You can settle all this by taking those two machinists out, because they are keeping six hundred of our other men off the job.'

I told him that was no consideration of mine, that we were keeping anyone off the job. He could go ahead with his work.

Then he says, 'We will get those fellows to change their union affiliation.'

I said, 'I have no authority as part of the management to tell [30] an employee what union he belongs to.'

I said, 'If you wish you may try.'

He says, 'Do you think it can be done?'

I said, 'No, I don't. It is my understanding that one you are complaining about has been or is the past president of the Machinists Local.'

Q. Machinists Local, which one was that, Mr. Scanlan? Was it the home of Mr. Smith?

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

A. He is the head man; I had reference to Mr. Merritt.

Q. Was there anything else said by Mr. Barbaglia at that time?

A. Mr. Barbaglia said he had no other alternative but to stop the job, he was going to have a slow down now—and I asked him——

Q. What job was he referring to?

A. He was referring to the Redondo No. 2 House Unit.

Q. Was there any other occasion that Mr. Barbaglia talked with either you in person or on the telephone concerning this, the second house unit?

A. No, there wasn't."

SAUL M. SCANLAN

Transcript, Vol. V, pages 475 to 478:

"Q. (By Mr. Garrett): It is the skills involved that you described to be those of the machinists? It hasn't been the affiliation of the men that exercise those skills, isn't that right?

A. That is right. If you talk about the mechanical line, the man must qualify as a machinist in order to be able to do that work properly.

Now, if he changes affiliation, that is something else, I don't know.

Q. If he has those skills it doesn't matter whether you call him a machinist or a millwright; in your estimation he is doing what in your estimation you call machinists work? [31]

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

A. As long as he is qualified.

Q. That has to do with the assembling of these machines, the assembling of the parts?

A. That is right.

Q. Now, when you test these machines on the test run, you say that you use all of the various crafts that you employ to do parts of that work.

A. I also say one reason is anticipation that should anything happen and we laid off all our different crafts and some part of the machine was not functioning the way we wanted it, we would have to rehire; maybe the man would go somewhere else and be employed elsewhere. We wouldn't get back the same men and not get the same efficiency. We would rather take a little loss for a few days, until we are satisfied the machine is going to do what we expect it to do.

Q. So you will have the men there to make repairs in case repairs are to be made, is that right?

A. That is right.

Q. Well, that is the same general situation, if the testing is done in your eastern plant, except there you have the men on the payroll all the time, is that correct?

A. I would say that is right.

Q. What is your age, sir? A. My age?

Q. Yes. A. 44.

Q. And you have been with the Westinghouse Company for how long? A. 22 years.

Q. Now, your employment of men on this work,

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

as I take it, your employment of men on the Redondo Beach plant followed the pattern you had set in employment of men on the City Harbor steam plant, is that right? [32]

A. That is right.

Q. You have already had one similar installation in that Harbor steam plant, is that correct?

A. That is right.

Q. You made your contacts with the unions at the start of the Harbor steam plant, is that right?

A. Yes, I would say so.

Q. You already had those union contacts made before the Redondo Beach work began?

A. That is right.

Q. Now, you got in touch with Mr. Smith of the Machinists Union then through your steam engineer?

A. The foreman, I think, made the contacts. Mr. Budge and myself, I think, we were together and made the contacts for the foreman. The selection of the men themselves was left—and is generally left to our foreman of each trade; feeling that they have to work for this foreman and if he puts on the men that he knows and they know that they are responsible to him we get the better class of work out of them.

Q. Was either one of the machinists working for you at the time of the shutdown on February 2nd, in 1949, a foreman?

Respondents' Exhibit A—(Continued)
(Testimony of Saul M. Scanlan.)

A. He had been, yes. Yes, he was a foreman on that job, and he had been a foreman on some of our previous larger jobs.

Q. So at the time of the work stoppage in 1949 you had, so far as machinists were concerned, one foreman working and one journeyman, is that right?

A. That is right; and two riggers."

SAUL M. SCANLAN

Transcript, Vol. V, pages 481-491:

"Q. Well, now, your company, at least, so far as installation is concerned, has no union policy, I take it, from what you tell me?

A. Are you referring to this locality and this outside—[33] what we call the field erection work now?

Q. Yes.

A. No. So far as—we have no union affiliation.

Q. You are free to hire any men you deem qualified, without respect to their union affiliations, is that right?

A. Free in this respect: With the consent of my superior, before we put men on, usually I would discuss it with my superior and we would formulate our plans, and if he has any objections he will say so at that time.

Q. But, as far as you know, there is no policy which would prevent you from using qualified men, regardless of union affiliations?

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

A. As far as I know, no.

Q. Or using men who had no union affiliation whatever?

A. That is right.

Q. You sometimes do that, I take it, sometimes you call the union for men?

A. Well, I don't particularly care what local he may belong to, as long as he is qualified for that job. Naturally, I am not going to put in—if I am working machinists, I am not going to bring in a man from another local, which will cause some dissension among the men I already have. But as far as the man himself is concerned, if he is qualified it would make no difference to me.

Q. So that when it comes to the performance of your work, every installation, it is not a matter of any importance to you whether the men are working for the general contractor on the plant or for the subcontractor, whether they have any union affiliations or not, is that right?

A. That is going to depend on how the contract is let, what our responsibilities would be. If the contract was let to deliver and erect, then that means that we have to supply the labor. My superior would tell me, 'You have so much money to do this work at a certain time.' [34]

Normally, I would try to get the most skill, the best efficient men I could to do that, to meet those conditions.

Q. I understand that when you sell a piece of

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

equipment and supply merely supervision, you have no problem as to the employment of labor?

A. That is right.

Q. I am talking about the cases where you are to handle the installation. You take into account in those cases the question of whether or not the employees of the general contractor, working alongside your men on the job, have union affiliations or not?

A. No, sir.

Q. It is a matter of complete indifference to you?

A. That is right.

Q. And to your company?

A. So long as the men will do the work, he is willing to pay the money; if it isn't right, they will redo it until we are satisfied the job is right. But the men that he puts on the job will be his responsibility.

Q. Now, in view of that situation, we have on the other hand the fact that when you had to look for installation men, the first thing you did was to go to Mr. Smith, is that not correct?

A. That is right.

Q. Mr. Smith of the I.A.M. A. Yes.

Q. You went to him at whose instance?

A. Probably my own.

Q. Suppose you tell me actually what happened.

A. If I remember, when we began to put in the first house unit down in the Harbor steam plant, and when it became known that we would supply

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

the labor, Mr. Drew and myself discussed the matter and we sat down and figured out what class, what trades of men we would need, the different trades. [35]

We would need so many men to assemble this turbine and generator and so many on the pipe and the riggers. So the natural assumption, when it came to the mechanical line, was to go to the Machinists and ask them if they could supply us with those men. Probably some influence might have been—because of the fact the No. 1 unit at the Harbor steam plant was installed with the customer's labor and with the customer's machinists. We had no other alternative for the other trades, the Pipefitters or the Riggers. There was just no one else to go to, so we requested men from them and obtained them.

Q. But you had not an alternative as to men to do the work you call machinists' work, as between different unions, did you not?

A. If we knew it, it didn't register in our minds at the time. The first contact we made was with the Machinists, and he had the men qualified to do our job, and we never looked around. We never shopped around.

Q. I submit to you, Mr. Scanlan, that is not a correct answer.

Mr. Binkley: I object to that.

Q. (By Mr. Garrett): I have pointed out to

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

you that at the time that you first approached Mr. Smith you did have a choice of two places where you might apply for men with the skills——

Mr. Ryder: I object.

Q. (By Mr. Garrett): ——you had in mind. Now, I ask you, did you know that at the time you first went to see Mr. Smith?

Mr. White: I object to the question.

Mr. Ryder: I object to that as no foundation being laid with respect to any choices.

Hearing Officer Altieri: You made a statement for the record. Then you asked him a question, Mr. Garrett. I am not entirely sure how much of it was contained in the statement that [36] was actually in the question. I think I will have to sustain the objection to the question on the form, at least.

Q. (By Mr. Garrett): Were you here during Mr. Budge's testimony? A. Today?

Q. Today. A. Yes.

Q. You heard Mr. Budge say that you didn't know whether or not the Machinists were in the American Federation of Labor?

Mr. Binkley: This is purely argumentative, if the Court please. I am going to object to it on that ground, so far as he has gone already; it is clearly argumentative.

Hearing Officer Altieri: Let him finish the question.

Respondents' Exhibit A—(Continued)
(Testimony of Saul M. Scanlan.)

Q. (By Mr. Garrett): Were you similarly ignorant to that?

Mr. Binkley: I object.

Hearing Officer Altieri: I will sustain the objection. I think it takes us a little bit afield, Mr. Garrett.

Mr. Garrett: All right.

Q. (By Mr. Garrett): At the time you went to see Mr. Smith at the start of your work on the Harbor steam plant, did you know that the Machinists were not in the American Federation of Labor?

A. No.

Q. When did you find that out?

A. I hadn't given it a thought until it was brought to my attention, oh,—I don't know; I don't know when it became—

Hearing Officer Altieri: May I inquire what the purpose of this line of questioning is, Mr. Garrett?

Mr. Garrett: Certainly. He has testified on direct as to the manner in which he procured the men.

Hearing Officer Altieri: Yes.

Mr. Garrett: That apparently is one of the points made by the petitioners here, that the employer in exercising a choice to some extent exercises an influence upon determining jurisdiction, for [37] purposes of this dispute.

Hearing Officer Altieri: Yes.

Mr. Garrett: At least, I think I have the right

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

to inquire into the knowledge he had at the time he did these acts. So that we can see what he intended by his actions. It is obviously one thing, if he believes he is hiring A.F.L. men and quite another if he is ignorant of that fact.

Mr. White: I object to the question on the grounds it presents nothing relevant to this dispute.

Mr. Binkley: I don't think the intention of the employer is relevant. I think if there is any relevancy it is in acts of the employer, rather than the intent that is back of the act. I think we are getting too far away from any relevant testimony.

Hearing Officer Altieri: I think it has a very remote bearing. I will allow the question.

Mr. White: I have the further objection that I don't think this witness is competent to testify on the status of the machinists as of today.

Hearing Officer Altieri: If I am correct, I don't think there is any question pending. I think the last question he asked and I inquired of Mr. Garrett what his purpose was of the line of questioning——

Mr. Garrett: I think the question was when, if at all, he found out the Machinists were in the A.F.L.

Mr. Binkley: That has been asked and answered. He said he didn't know.

Mr. Garrett: He said he didn't know at the

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

time he went to see Smith, and I am asking him when he did find out.

Hearing Officer Altieri: That is the question he wants to ask now. When did you find out the I.A.M. was no longer with the A.F.L.?

The Witness: I was told by some of the workmen at some stage; [38] I don't know the time.

Mr. Binkley: Wait a minute. Just answer the question. Did you ever find out? Answer yes or no. Did you ever find out?

The Witness: Yes.

Q. (By Mr. Altieri): Now, when?

The Witness: When did I find that out?

Mr. Binkley: Now, if you know.

Hearing Officer Altieri: When did it come to your attention? Let's put it that way. Fix an appropriate time, so we can finish with this line of questioning.

The Witness: About the time of the No. 2, 65,000 unit in the Harbor steam plant, which would be sometime in '47, I don't know just when.

Q. (By Mr. Garrett): When was that with relation to the installation of the No. 2 unit, the 6,000 kilowatt unit in the Redondo Beach plant?

A. About a year.

Q. About a year before?

A. A year before.

Hearing Officer Altieri: Did you go to the Machinists Lodge for your men because they either

Respondents' Exhibit A—(Continued)
(Testimony of Saul M. Scanlan.)

were or were not connected with the A.F.L.?

The Witness: We never gave that one thought.

Hearing Officer Altieri: In view of that answer, I am going to sustain any objection to any further questioning along this line, Mr. Garrett's just wasting time.

Q. (By Mr. Garrett): Now, at the time then that you installed the No. 2 unit in the Harbor steam plant, had you at that time undertaken the installation of your first unit? Had you begun the installation of your first unit at the Redondo Beach plant?

Mr. Binkley: I object. That is along the same lines to which you just sustained an objection. [39]

Hearing Officer Altieri: Let's see if it is. Let's let him answer.

The Witness: We had not begun the erection of that Redondo unit.

Q. (By Mr. Garrett): Now, did you ever talk to Mr. D'Antoni about any conversations he had or did Mr. D'Antoni tell you about any conversations he had with representatives of the A.F.L. unions prior to January or February, 1949?

A. It seems to me like he mentioned once or twice having talking to some members, but I don't know the locals or what their affiliations or their positions were.

Q. Did he ever tell you about the things that

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

were causing the trouble, which lead to the work stoppage in 1948?

A. Yes, it was kind of brief and it is still hazy; something about the electricians. It seems to me like he told me the Electricians claimed the erection of this machine.

Q. Did you go down there at the time of that work stoppage?

A. The following day. I don't think I went down that day. It seems to me like I was busy somewhere and I didn't get the call.

Q. Did you talk to any of the union representatives at that time? A. I did not.

Q. You made no attempt to familiarize yourself with the cause of the trouble? A. I did not.

Q. You made no adjustments as a result of the trouble? A. I did not.

Q. Or changes in your hiring policy?

A. That is right.

Q. Your hiring policy continued to be to hire the men on what you called the machine work exclusively from the Machinists?

A. That is right. [40]

Q. That had been your hiring policy on that type of work ever since the start of your work on the Harbor steam plant built by the city?

A. That is right.

Q. Did you ever hire anyone in that type of work from the time of the start of your work on

Respondents' Exhibit A—(Continued)

(Testimony of Saul M. Scanlan.)

the harbor steam plant, except from M. Smith's lodge of the Machinists?

A. For the mechanical work?

Q. That is right. A. I did not. [41]

FLOYD E. SMITH

Transcript, Vol. VI, pages 620-1

“The Witness: Floyd E. Smith. 2315 Adriatic Avenue, Long Beach.

Q. (By Mr. Ryder): What do you do, Mr. Smith?

A. Business representative of Local Lodge 1235, International Association of Machinists.

Q. How long have you been business representative? A. Since January of 1946.

Q. Are you the only business representative of that lodge? A. At this time I am.

Q. What do you mean by “at this time?”

A. During '47 and '47 I had two assistants.

Q. What are their names?

A. In '46 John R. Herd and Luke M. Moore. In '47 it was John R. Herd and Robert N. Crichton.

Q. Are you an elected business representative of Lodge 1235? A. I am.

Q. What type of Lodge is 1235?

A. Journeymen and Helpers, Local, known as a contract lodge.”

Respondents' Exhibit A—(Continued)

FLOYD E. SMITH

Transcript, Vol. VI, pages 623-630:

“Q. (By Mr. Ryder): Mr. Smith, have you personally referred erection machinists to the Westinghouse Corporation for the Redondo Beach plant?

A. Many times, yes.

Q. Have you personally referred erection machinists for the installation work of the General Electric Company at the Redondo Beach plant?

A. Yes.

Q. Now, directing your attention to the referrals to the Westinghouse Electric Corporation for any of their installations in the Southern California area, when was the first time that a connection was made between Westinghouse and your lodge in terms of such referrals? [42]

A. The latter part—rather, in the month of December of '45, or first part of January '46.

Q. Would you describe that first contact? Who made it?

A. Mr. Scanlon and Mr. Drew, both from Westinghouse Company.

Q. Who is Mr. Drew?

A. At that time, I believe, he held the same position as Mr. Budge holds at the present time; field steam supervisor.

Q. He was the predecessor of Mr. Budge, is that right?

A. That is right.

Q. Did Mr. Scanlan and Mr. Drew call you?

A. They contacted the office of the local. I am

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

not sure whether they talked to myself or our grand lodge representative, T. E. McShane, who was there at the time.

Q. Would you remember which man, either Mr. Scanlan or Mr. Drew, who made that call or contact, as you described it?

A. I believe it was Mr. Scanlan.

Q. What did he say?

A. He asked for an appointment or if we could meet to talk over the arrangements for machinists to do some installation and erection work at the Harbor Steam plant.

Q. Did you give them an appointment?

A. We did.

Q. When did you meet?

A. Well, I don't recall whether it was that afternoon or a day or so later we met with them.

Q. Where did you meet?

A. In the office of Lodge 1235.

Q. Who was present for the Westinghouse Corporation at that meeting?

A. Mr. Scanlan and Mr. Drew.

Q. Who was present for Lodge 1235 at that meeting? A. Mr. McShane and myself. [43]

Q. Who was Mr. McShane?

A. A grand lodge representative of the International Association of Machinists.

Q. What was said about the Westinghouse representatives at that meeting?

Hearing Officer Altieri: Give us the substance of

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

the entire conversation, so far as you recall it, what they said to you and what you said to them.

The Witness: They first outlined the type of equipment or notified us that they had a turbo-generator to be erected at the Harbor steam plant.

They asked us if we had men qualified to do that type of installation and erection work.

We told them that we knew we had the men and could supply them, because we had several members who had worked in the shipyards on erecting turbo-generators in ships, in all of the shipyards; that was under a Metal Trades agreement which the Machinists were a party of.

Q. (By Mr. Ryder): With respect to that installation, were some of those Westinghouse turbines, do you know? A. Yes, they were.

Q. Would you go on, please.

A. Also, knowing that we had members who in past years had worked on the installation, erection of steam turbine generators in various parts of the country, we then discussed hours and wages and working conditions.

It was agreed at the time necessary that Mr. Scanlan would notify us of the number of men he would need on the job or require for the job.

It was approximately the middle of September that we supplied——

Q. Is that the substance of that?

A. The substance of that. [44]

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

Q. The substance of that particular meeting?

A. Yes.

Q. Did you subsequently supply men to the Westinghouse Corporation? A. We did.

Q. For the Harbor steam plant?

A. That is right.

Q. Did you have any other meetings with Mr. Scanlan or Mr. Drew or any other representative of Westinghouse—

Mr. Garrett: Just a moment. I beg your pardon.

Q. (By Mr. Ryder): —prior to the start of that supplying of that labor?

The Witness: Not to my knowledge.

Mr. Garrett: May I have the previous question and answer read?

(The record was read.)

Q. (By Mr. Ryder): When did you first start supplying machinists for the Harbor steam plant?

A. Approximately the middle of January 1946, on their first house unit.

Q. How many Westinghouse units did you supply men for the Harbor steam plant? Would you approximate that figure?

A. Supplying for the fifth unit at the present time. I believe their fifth unit is being erected at the Harbor steam plant, and we are supplying the men.

Q. Do you know how many Westinghouse large

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

units you supplied men for at the harbor steam plant?

A. To the best of my knowledge this is the third one, at the Harbor steam plant.

Q. How many house units at the Harbor steam plant, Westinghouse house units? A. Two.

Q. With respect to supplying those men for those units you have just referred to, did you do all of the dispatching of the men for the work?

A. No.

Q. Did you do the majority of the dispatching?

A. The majority of it. I might answer that this way: That most all calls in for men are taken from an out-of-town book, which we have classified under the headings of shop machinists, which is a machinist that has most of his time or all of his time, after he has learned the trade, in a machine shop.

Another section in the Diesel repair, which that machinist or journeyman has followed, the Diesel end of the trade.

Marine Machinist is the member that has followed the marine end. And the erection men who have followed the erection end of the trade.

If I am not there to receive the call, and if the men are to be dispatched at once, Mr. Carl James, who is our financial secretary, will dispatch for me, by signing my name by him, with initials.

If the men are not to be dispatched until a day

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

or so later, they wait until I come in to dispatch them to the job.

Q. Is there anybody else besides Carl James and yourself that does such dispatching?

A. Yes. In '46 the two previous assistants that I named, John Herd and Luke Moore, dispatched, and at that time we also had a dispatcher for the first part of '46; his name is Guy M. Brunkman.

Q. Were all those dispatches done under your general supervision, if you did not do it yourself?

A. That is correct.

Q. Since January of '46?

A. That is correct.

Q. Now, with respect to your practice in terms of dispatching, do [46] you attempt to send men to employers who have employed these men on previous jobs? A. Always.

Q. Did you do that with respect to the Westinghouse installation at the Harbor steam plant?

A. That is right.

Q. Did Westinghouse or any representative from Westinghouse Electric Corporation report to you any dissatisfaction with the men that you sent them for work at the Harbor steam plant?

A. Never.

Q. Are you still supplying men for Westinghouse at the Harbor steam plant? A. I am."

Respondents' Exhibit A—(Continued)

FLOYD E. SMITH

Transcript, Vol. VI, pages 631-4:

“Q. Now, Mr. Smith, directing your attention to the Westinghouse installations at the Redondo Beach plant of Southern California Edison Company, were you contacted by any representative of Westinghouse Electric Corporation, with respect to the supplying of labor for the installation of the first Westinghouse unit in that plant?

A. Yes. I might state in this matter of having a job just completed or being under work at the present time—just prior to the starting of the job, stating that it was going to be started.

Q. Who contacted you?

A. Well, I believe Mr. Scanlan.

Q. Had Mr. Scanlan contacted you earlier with respect to the Harbor steam plant, in the supplying of labor? A. That is right.

Q. Around what date was that? When this contract was made?

A. Will you repeat just what unit you are talking about, which job?

Q. I am referring to the first unit of Westinghouse, the No. 1 unit at Redondo Beach. [47]

A. The job was started the latter part of November of 1947 or the first part of December 1947. Sometime prior to that I was notified by Mr. Scanlan that the unit was being shipped. I am just trying to recall whether we had anybody working on any other job at the time or not. I don't believe

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

we did have; and stated that Mr. Skeegan, or asked if Mr. Skeegan, which is one of the machinists and a working foreman for Westinghouse, would be available for that job.

Q. Mr. Skeegan is a member of Lodge 1235?

A. He is.

Q. What did you say?

A. Yes, that he would be available and would go to work.

Q. What was the substance of the entire conversation during that first contact made by Mr. Scanlon? What did he say, what did you answer and what arrangements did you make, in other words?

A. If I recall right, it was approximately around that time that we were discussing increase in wages, and I believe we talked some of the increase and what date it would be started or be granted by the company.

There was never very much conversation on supplying men to any of the jobs after the first contact.

Q. Was that generally handled for Westinghouse by somebody, other than Mr. Scanlan and Mr. Budge?

A. Most of the time those two, after the first original contact.

Q. Would they contact through Mr. Skeegan to you for subsequent referrals?

A. They have. Mr. Skeegan has called me and

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

stated they needed an extra man or two on one of the shifts, or other.

Q. Did you supply the men for the first unit, is that correct? A. That is correct.

Q. Did you supply men for the first Westinghouse unit? A. That is correct.

Q. Did you supply installation mechanics for the second house unit? [48]

A. At the Redondo plant?

Q. Yes. A. I did.

Q. The one that the dispute finally came to a head about? A. I did."

FLOYD E. SMITH

Transcript, Vol. VI, pages 634-48:

"Q. From the time you started supplying men for the first house unit to the time when you were supplying Mr. Merrit and Mr. Sinclair for the second house unit—I mean the first big unit, until the time of the second house unit, did you have various dealings with the Westinghouse representative in terms of adjustments in wages and rates of pay and hours?

A. Yes. I believe it was—a wage adjustment was made after the starting of the big unit or known as unit No. 1 at the Redondo plant.

Q. Were generally these adjustments made orally?

A. As a rule, they were discussed between Mr. Budge, Mr. Scanlan and myself, and I wouldn't

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

always say that there were letters of confirmation going on them; sometimes we did.

On the two occasions when I can recall that we confirmed the conversation by letters.

Mr. Ryder: Will you mark this for identification.

(Thereupon the documents above referred to were marked Machinists' Exhibits Nos. 5-A and 5-B for identification.)

Q. (By Mr. Ryder): Mr. Smith, I hand you Machinists' Exhibit for identification 5-A, which is a letter over the signature of Mr. William L. Budge, dated July 27, 1947, and ask you to inspect that document.

A. (Witness complies.)

Q. Are you familiar with that document?

A. I am. [49]

Q. Is that one of the communications you previously referred to with respect to adjustments on rates of pay and hours of work? A. It is.

Mr. Ryder: I offer Machinists' Exhibit 5-A for identification into evidence. I would like to point out here on the record, Mr. Examiner, that the original has some extraneous material written on it. We don't know by whom. That has no reference to the body of the letter.

I do have photostatic copies of this communication, which excludes this material.

Hearing Officer Altieri: Show it to Mr. Garrett.

Mr. Ryder: Do you want to look at it first?

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

Hearing Officer Altieri: Show it to Mr. Garrett first.

Is there any objection to the introduction in evidence of this document?

Mr. Garrett: No objection.

Hearing Officer Altieri: It will be received.

(The document heretofore marked Machinists' Exhibit No. 5-A for identification was received in evidence.)

Mr. Ryder: We will keep the original. Seemingly, we agreed to that previously on other exhibits.

Q. (By Mr. Ryder): Mr. Smith, I hand you Machinists' Exhibit for identification 5-B, and ask you to inspect that document.

(Witness complies.)

Q. Is that one of the documents referring to the rates and hours of work you previously testified to? A. It is.

Mr. Ryder: I offer Machinists' Exhibit 5-B into evidence. I will show it first to Mr. Garrett.

Hearing Officer Altieri: I take it there is no objection to this document?

Mr. Garrett: No objection. [50]

Hearing Officer Altieri: It will be received.

(The document heretofore marked Machinists' Exhibit No. 5-B for identification was received in evidence.)

Q. (By Mr. Ryder): Mr. Smith, I hand you

Respondents' Exhibit A—(Continued)
(Testimony of Floyd E. Smith.)

Machinists' Exhibit 1-A, 1-B, and Exhibit 1-C, and ask you to inspect those documents.

(Witness complies.)

Q. Are you familiar with those documents?

A. I am.

Q. Are those documents part of the correspondence with respect to rates and hours dealing with the Westinghouse installation? A. They are.

Q. Mr. Smith, would you briefly describe what basic Lodge 1235 use for the purpose of establishing the rates of pay that you did establish with the Westinghouse Corporation on those jobs?

Mr. Binkley: I object to that as being irrelevant and immaterial.

Mr. Garrett: We make the same objection.

Hearing Officer Altieri: I will sustain the objection. What is the materiality of it, Mr. Ryder?

Mr. Ryder: I wanted to show through Mr. Smith the methods in which the rates were reached, in terms of the timing of the adjustments, because of no continuing written contract with the Westinghouse Electric Corporation for this installation work.

Mr. Binkley: If it is stipulated, Mr. Ryder, there was no contract with Westinghouse, I will withdraw my objection.

Hearing Officer Altieri: Mr. Garrett, has an objection, too.

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

Mr. Garrett: We think it is incompetent, irrelevant and immaterial.

Hearing Officer Altieri: I think so, too. I am going to sustain the objection.

Mr. Ryder: I will drop it. It is not too important.

Q. (By Mr. Ryder): Mr. Smith, directing your attention again to the installation work at the Redondo Beach job, when was the first time [51] that you heard—or did you hear of any claims by any other labor organization, other than Machinists Union, concerning the machinists' work on the Westinghouse installation?

Hearing Officer Altieri: Is that question clear to you, Mr. Smith?

The Witness: No.

Mr. Ryder: I will rephrase it.

Hearing Officer Altieri: You started one question, and you veered to another.

Mr. Ryder: Yes.

Q. (By Mr. Ryder): The Westinghouse officials at any time notified you of any claims by labor organization, other than the Machinists Union to the work the machinists were doing at Redondo Beach?

A. No. I am just trying to think, the first time that the company officials notified me of any claim being made by any other organization——

Q. Did Mr. Budge ever notify you of any such claim?

Respondents' Exhibit A—(Continued)
(Testimony of Floyd E. Smith.)

A. Yes, I am trying to think of approximately the date. It was the latter part, I believe, of January of '48.

Q. Are you certain about that date?

A. Yes—first part—no, it would have been the first—latter part of January of '49.

Q. Mr. Budge called you?

A. Called me by phone.

Q. What did he say?

A. He said to me that he had been informed, if I recall correctly, from someone from Stone-Webster that the Building Trades were making claims on the unit that was going to be installed. I believe that was the No. 2 house unit.

Q. At Redondo Beach?

A. Redondo Beach plant.

Q. What was the full substance of that conversation between you and [52] Mr. Budge?

A. Well, I don't recall just exactly. I believe I probably told him not to do too much worrying about it, that on various other jobs that probably the same claim had been made by Building Trades Council and the Carpenter-Millwrights.

Q. Did Mr. Budge during that conversation tell you what he intended to do about those claims?

A. I don't believe he did.

Q. Was there any other contact made by Mr.

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

Budge to yourself with respect to this same type of subject matter?

A. Yes. On the day of the stoppage of work by the Building Trades, or thereabouts. I won't say on that day, but right in that neighborhood.

Q. What was the substance of your conversation with Mr. Budge on that occasion?

A. Well, Mr. Budge notified me at that time that up until some other changes had been made by his firm that the Machinists would continue to do the work, as long as it was possible for them to work on the job.

Q. Did he state if any representative of any labor organization had contacted him with respect to that work?

Hearing Officer Altieri: There has been no objection to this line of testimony, Mr. Ryder. I see we are going into testimony that Mr. Budge has given. Do you want Mr. Smith to corroborate that?

Mr. Ryder: It is corroboration.

Hearing Officer Altieri: Let's all lend a hand in expediting the hearing.

Mr. Binkley: I will stipulate this witness will testify to the same facts Mr. Budge testified to in regard to this conversation.

Mr. Ryder: We will accept that stipulation.

Mr. Garrett: We won't.

Mr. Trautman: You understand that is not binding on any other [53] parties?

Respondents' Exhibit A—(Continued)
(Testimony of Floyd E. Smith.)

Mr. Ryder: All right.

Q. (By Mr. Ryder): The second contact Mr. Budge made to you, that was on the telephone, was it not?

A. It was over the phone.

Q. Did Mr. Budge tell you of a claim made by any representative of the Carpenters Union concerning the Machinists' work on the second house unit?

A. Yes. He notified me that a Mr. Barbaglia of the Carpenter-Millwrights had made a claim.

Q. Did he tell you what Mr. Barbaglia had told him?

A. If I recall correctly, he stated that Mr. Barbaglia had stated they would have to be—or that there would be a shutdown of the job.

Hearing Officer Altieri: I might add, Mr. Ryder, for its value, this corroborative testimony is rank hearsay, anyway. Go ahead, if you insist.

Q. (By Mr. Ryder): Did Mr. Budge contact you with respect to the assignment of men on the second house unit?

A. Would you repeat that, please?

Q. Did Mr. Budge contact you with respect to the assignment of installation mechanics on the second house unit?

A. I will answer that by stating to you it is Mr. Budge or Mr. Scanlan.

Q. On what date was that, if you remember?

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

A. The latter part of January of '49 they stated that it would be approximately the first of February that the second house unit would be started.

Q. Now, there was previous testimony, Mr. Smith, that the installation work on the second house unit was started on January 31st.

A. That is correct.

Q. Of 1949. In terms of that date, when did Mr. Budge contact you [54] with regard to that installation work?

A. Well, a few days prior, I would say approximately a week prior to that time. I would have to check records. I believe he notified me that—I am just trying to think whether both of the men were working on an installation job that was already going on or if they were laid off. I would have to check records on that.

I believe one was working and one was laid off for the layoff, was off the time.

Q. You are referring to Mr. Merrit and Mr. Herd? A. Yes.

Q. Referring to February 2nd, when the stoppage took place, did anybody notify you of this stoppage on that date?

A. I was notified on February 1st by one of my members working on the job that there was quite a bit of rumor that the job would be stopped the following morning——

Q. Who was that? A. Mr. Lou Merrit.

Q. Go ahead.

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

A. I asked him for what reason, and he said that the operating engineer operating the crane for them, or in the part they were working, notified him that—or that the operating engineer was informed that there was C.I.O. Machinists on the job, and that is why they were going to stop the job.

Q. The Machinists' Union is not in the C.I.O. Union, is it? A. Absolutely not.

Q. Well, when you got that information, what did you do?

A. I notified the boys that I would be there the following morning.

Q. Whom did you notify?

A. Mr. Merritt and Sinclair. I don't recall whether I had been in the office at the end of this shift or not; I probably did. I would have to get further information on so-called work stoppage that was supposed to have been the following morning. [55]

Q. Did you go to the plant site on the morning of the work stoppage? A. I was there.

Q. What did you see when you arrived?

A. A group of workers known to me as the—standing up in front of the gate—or I would say the employees' gate, where the time clocks are. I believe there are time clocks there. And a few at the gate that I call the truck gate, on down the main road or street that the plant is on.

Q. Was there any construction work going on

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

with respect to the plant, so far as you could see?

A. As far as I could see there wasn't. I walked back to this truck gate with the two members, Mr. Merritt and Sinclair, and asked a party there that I later found out was a representative of the Carpenter-Millwrights, by the name of Barton—and I asked him what was wrong, and he said that these—that they just decided to take a holiday.

Some workers standing there, construction workers—and I don't know their names—spoke up——

Mr. Trautman: This is going to be anonymous hearsay.

The Witness: This is what I overheard.

Q. (By Mr. Ryder): Do you know the names of the construction workers? A. I do not. [56]

Q. (By Mr. Ryder): Would you continue, please.

A. They stated that they were informed they were out because there was C.I.O. Machinists on the job.

Hearing Officer Altieri: Now, you have a compound anonymous hearsay.

Mr. Trautman: I didn't object.

Q. (By Mr. Ryder): Mr. Smith, did Mr. Sinclair and Mr. Merritt continue to work on the second house unit? A. They did.

Q. Until what date did they work, if you know?

A. I believe the end of their shift, work shift was the 10th of February. It was on a Thursday.

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

The following Friday morning, I believe it was February 11th, that they went in after their tools and left the job.

Q. Did any representative of the Westinghouse Corporation confer with you with respect to these men leaving the job finally? A. Yes.

Q. Who was that?

A. Mr. Budge called me, I believe, on the evening of the 10th—or in the afternoon of the 10th.

Q. What was the substance of that conversation?

A. He stated that no further parts or work for the machinists on the No. 2 House Unit were available and they would be off [57] the following—or as of the end of that shift, or the following morning.

Q. What did you say during that conversation?

A. Well, I believe that I probably said that I would so notify the men.

Q. Now, Mr. Smith, referring to the installation work of the General Electric Corporation at Redondo Beach, did any representative of the General Electric Company contact you with reference to obtaining help for the installation of the first General Electric Unit at Redondo Beach?

A. Yes. Mr. Wise of General Electric contacts me on all men that he wants for the mechanical end.

Q. When was that first contact made with respect to this Redondo installation?

A. If I remember correctly, on the setting of

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

the sole plates on the Redondo unit for General Electric. He notified me he had transferred some men from one of the repair jobs or installation jobs that was going on at the Long Beach Southern California Edison plant over to the Redondo plant.

Q. Did he request your supplying of any men by name?

A. Yes, there were several different ones that he requested to be supplied on the job.

Q. Could you name several of those men whom he requested at that time? Did he request Rufus Carter?

A. I believe at that time Rufus Carter was moved from a San Diego repair or installation job up to the Redondo Beach job. Jim Kay, a member, and Johnny Rose and his brother Herman Rose, Steve Gillette, Miles O'Hand and several others that are requested from time to time on various jobs, that I wouldn't know if they were on the Redondo job or just which job.

Q. When a transfer is made from one job to another, is that generally cleared by the employer through your office? [58]

A. As a rule, if the man is transferred from one job to another the steward, our union steward on the job notifies me of that transfer.

Q. At the time of Mr. Wise's first contact with respect to this first G. E. Unit, did you discuss terms and conditions of work?

Respondents' Exhibit A—(Continued)
(Testimony of Floyd E. Smith.)

A. Prior to that time at approximately the same time that we received an increase or an adjustment in wages from Westinghouse, we had talked over the wage rate for the—or the rate that would go into operation at the Redondo plant.

Q. Has that been a continuing affair, Mr. Wise clearing with respect to subsequent adjustments on rates and hours of work? A. That is right.

Q. Has that continued up to the present time?

A. It has.

Q. Covering other installations, other than Redondo? A. That is right.

Q. That is, the Terminal Island installation going on at the present time?

A. That is correct." [59]

FLOYD E. SMITH

Transcript, Vol. VII, pages 685-689

"Q. (By Mr. Garrett): On this Redondo Beach Edison job, have you ever had any of your members on there except as employees of the Westinghouse Company?

A. Not to my knowledge.

Q. So far as you know, you haven't had any of your members working for Stone & Webster or any of their subcontractors? A. No, sir.

Q. You knew at the time you put your men in there originally that was an A. F. of L. job, didn't you? A. Yes.

Respondents' Exhibit A—(Continued)
(Testimony of Floyd E. Smith.)

Q. Do you recall having a conversation with either Mr. Scanlon or Mr. D'Antoni—you know both of them, don't you? A. I do.

Q. —back in the middle of 1946, while they were working on the Harbor Steam plant job, concerning demands of the A. F. of L. Building Trades Council for the work on the Harbor Steam plant? You were supplying men on that work at that time, were you?

A. On the Harbor Steam plant, yes.

Q. By arrangement with Mr. Scanlon?

A. Correct.

Q. Of Westinghouse? A. Yes.

Q. They were working on their first unit there at that time, were they not?

A. The first unit went in the early part of 1946.

Q. I am referring to the time from July to September, 1946. That would be about the time Westinghouse was engaged in the installation of the first unit at the Harbor Steam plant?

A. That would be at that time they were in the first large unit.

Q. That is what I mean. A. Yes. [60]

Q. They had already installed a smaller unit?

A. Correct.

Q. At the time Mr. Scanlon was on that job at the Harbor Steam plant, was he not?

A. Mr. Scanlon was there.

Q. Was Mr. D'Antoni on that job also?

Respondents' Exhibit A—(Continued)
(Testimony of Floyd E. Smith.)

A. No, sir.

Q. Do you know who they had on that job as resident engineer? A. No, I don't.

Q. Do you recall anybody representing Westinghouse, besides Mr. Scanlon, who was on that job as engineer?

A. None of the work engineers that is there. I have met several of them, but I don't recall them by name. My dealings have never been with those men.

Q. I can't refer to them by name, but can you recall during the period from July to September, 1946, talking with either Mr. Scanlon or any other Westinghouse engineer on that Harbor Steam job about demands that were being made at that time by the A. F. of L. council that the A. F. of L. unions be permitted to do that work for Westinghouse.

A. No, I can't recall that I did.

Q. Can you recall talking to Gene Boyd of the A. F. of L. Building Trades Council about it along about the time I have mentioned?

Mr. Binkley: What was that name?

Mr. Garrett: Eugene Boyd.

Mr. Binkley: Can we have him identified?

Mr. Garrett: He is the former business agent for the Los Angeles Building and Construction Trades Council.

The Witness: No. I never talked to Mr. Boyd.

Q. (By Mr. Barrett): Do you recall talking to Mr. Merritt, in the period I have spoken of, on that

Respondents' Exhibit A—(Continued)

(Testimony of Floyd E. Smith.)

subject, that is, the period [61] from July to September, 1946, L. M. Merritt?

A. Yes, I believe I talked to Mr. Merritt once about it.

Mr. Garrett: To identify him for the record, he was at that time a business agent for Millwright Local 1607.

Q. (By Mr. Garrett): It is a fact, is it not, Mr. Smith, that in 1946 you made this connection with Westinghouse through Mr. Scanlon, and thereafter you furnished your men wherever you could to do the installation work on their turbo electric equipment?

A. Furnished all men for their erection work since the beginning of 1946.

Q. You think, as far as you are concerned, you have furnished all the men they have used on the work they have installed themselves?

A. That they have hired.

Q. Where they have done the hiring?

A. Yes, as far as I know.

Q. And, in general, you have gotten your men in on their work in all cases where they were able to hire your men, by reason of the fact that it was either a job that wasn't controlled by the A. F. of L., or was a repair job, or was a job like that, at the Harbor Steam plant, where they would be protected by an injunction?

Mr. White: We object to the question.

Respondents' Exhibit A—(Continued)
(Testimony of Floyd E. Smith.)

Hearing Officer Altieri: Sustained.

Q. (By Mr. Garrett): Now, it is a fact, is it not, that on other jobs where they have had to deal with A. F. of L. contractors, the Millwrights have been used to do the same work you have done on the jobs you have described?

Mr. Ryder: We object to that.

Hearing Officer Altieri: I will allow that, if he knows.

The Witness: To the best of my knowledge, every job that Westinghouse has erected in Southern California or the 12 Southern Counties, they have used my members of 1235, where they have hired.

Q. (By Mr. Garrett): Where they have hired?

A. Yes." [62]

HERMAN BARBAGLIA

Transcript, Volume VIII, page 980 to 986:

“Q. (By Mr. Garrett): After the conversation you had with Mr. Lyons in August, 1948, what is the next conversation you had with anyone about this matter, outside of conversations with persons connected with the labor movement?

A. I later, then as I said approximately two months later, somewhere in November or December, I am not quite sure, I contacted Mr. Budge on the telephone and talking to him about the—first on the

Respondents' Exhibit A—(Continued)

(Testimony of Herman Barbaglia.)

Stone and Webster job, and that it being the holidays that I would like to have an appointment with him after the holidays and between myself and one of our International representatives. After the holidays we tried to contact Mr. Budge and he either was not in or he was out on a ship making a trial run or something, and we could never get together, and to this date I have never met Mr. Budge and discussed this matter with him personally.

Q. You did talk to him over the 'phone though, did you? A. Just that one time.

Q. That was the first time you got him on the 'phone? A. That is right.

Q. Did you introduce yourself, tell him who you were? A. You mean lately?

Q. No, when——

A. Over the telephone, yes. Over the telephone I told him who I was.

Mr. Smith: Mr. Barbaglia, Mr. Budge.

The Witness: Over the telephone I told him who I was.

Q. (By Mr. Garrett): You already knew who he was?

A. That is right, and in our first conversation we discussed the job that was going on in El Centro, which was being done by Millwrights down there. [63]

Q. That is the Golden job, is it?

A. The general contractor was Golden. I un-

Respondents' Exhibit A—(Continued)
(Testimony of Herman Barbaglia.)

derstand Bryan Lane had the generator.

Q. Was that Westinghouse equipment down there?

A. That is right. I think it was a 15,000 kw generator.

Q. Is that a turbo-electric job down there?

A. That was. I never have been to the job. It was outside of El Centro. I believe it was for the Metropolitan Water District down there or some water outfit.

Q. Did he know Millwrights were working on that job? A. He did.

Q. Did you talk to him about Millwrights working on his next Redondo Beach unit?

A. I did not. I was trying to make that appointment for him and myself and the International to sit down with him and discuss it.

Q. Did he say you could have an appointment?

A. I don't remember if he told me—yes, he did. He says right after—I was the one that made the announcement that we would meet right after the holidays and then I would contact him then to make the appointment, and which as I tried to get him three or four times or whatever it may be, and we never got him, and of course the incident happened down at Redondo Beach.

Q. You never talked to Budge after that one telephone conversation? A. No.

Respondents' Exhibit A—(Continued)

(Testimony of Herman Barbaglia.)

Q. Did you go down there on the Redondo Beach job on the 31 of January, 1949?

A. No, I was down there I believe on a Monday before the stoppage of work and went in to see Mr. Sheets.

Q. Did you have a conversation with Sheets?

A. I did. I am trying to think what I said to him over there. This thing has been so long now.

Q. Wait a minute. Let's find out what date that Monday was.

A. That Monday was—I believe it was Monday, wasn't it?

Q. The 31st, January 31st?

A. I believe it was on a Monday or Monday or Tuesday. Wednesday I believe the job went down. I don't know what day the job went down, but anyway it was a couple of days before the job went down.

Q. January 31st was Monday. Did you talk to Mr. Budge on that date?

A. No, Mr. Sheets.

Q. Where was that, at the plant?

A. At his office, yes.

Q. Did he tell you whether or not he had already talked to Mr. Mashburn about the job?

A. He had.

Q. Did you have a conversation with Mr. Sheets, yourself? A. I did.

Respondents' Exhibit A—(Continued)
(Testimony of Herman Barbaglia.)

Q. Tell us about it. He is right here so he can let us know if it is wrong.

A. I am trying to remember what was said there. We discussed the work that Millwrights had done in different parts of the country on this type of work, and Mr. Sheets at that time agreed that Millwrights was doing so in other parts of the country, and I told him then that I didn't see why we can't use them here. I believe he told me the reason why we couldn't use them here, because Stone and Webster had no part of the installation of the generators. While we were in there talking to Mr. Sheets, there were two gentlemen came in, I do remember the name of one and I don't remember the name of the other one. The other was Mr. Scanlon of the [65] Westinghouse Electric.

Q. Did you see Scanlon?

A. That is right. My conversation with Mr. Scanlon was——

Mr. Binkley: Is this the same day?

The Witness: Yes. I asked Mr. Scanlon—I found out who Mr. Scanlon was, and I asked him at that time if he would not remove the two or three machinists that were on the job.

Q. (By Mr. Garrett): They were already there?

A. They were already on the job. They went to work on Monday morning.

Q. And they had gone on that same day?

Respondents' Exhibit A—(Continued)

(Testimony of Herman Barbaglia.)

A. Monday morning, yes.

Q. You are talking about Monday, aren't you?

A. That is right. I asked him then if he would remove those men off of the job until we could straighten this thing out within our organization.

Q. What organization? Did you tell him what organization you meant?

A. What I was referring to was the Building Trades Organization.

Q. I am not talking about what you were referring to. What did you tell Scanlon?

A. Well, that is what I told him.

Hearing Officer Altieri: I think that is what he was answering.

Mr. Garrett: I want to be sure about the conversation he is giving me now.

The Witness: If he would remove those men so that we could further work this thing out between our organization and Stone and Webster's organization and his organization. He told me he had no authority to move anybody off and that he would not move anybody off. [66]

Hearing Officer Altieri: During the conversation, was it clear to Mr. Scanlon you were talking about the Building Trades Council?

The Witness: That is right. I told him then that he was putting Stone and Webster in a peculiar position, I thought he was not cooperating with Stone and Webster by leaving these men on, for I

Respondents' Exhibit A—(Continued)
(Testimony of Herman Barbaglia.)

no doubt saw trouble in the wind, I was not sure but I had an idea, and with that he said he would not pull his men off and I bid him good day and I left." [67]

WILLIAM L. BUDGE

Evidence Relating To Demands By Respondents
Transcript, Volume III, page 278 to 282:

"Q. Mr. Budge, directing your attention to the dispute with respect to House Unit No. 2, when was it first brought to your attention that a labor organization other than the Machinists Union desired to do the installation work on that house unit?

A. Mr. Barbaglia called me sometime, as I recall, in late November or early December, stating that he would like to——

Mr. Binkley: What year was that? What year?

The Witness: It was in '48.—stating that he would like to discuss the erection or the labor for the erection of these units.

I told him I would be willing to see him in my office at any time, other than that particular day, as I was leaving to go out of town, and I have never heard from him since.

Q. (By Mr. Ryder): Mr. Barbaglia in that telephone—that is a telephone conversation?

A. Yes.

Q. In that telephone conversation did he state

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

that he desired that you employ members of his union?

A. To my knowledge he didn't. He said he just wanted to discuss the situation.

Q. Did he elaborate on what he meant by "discussion"?

A. No, he didn't. As I recall, he had some of his—I think he called them International people or someone present that he wished to bring over, but he didn't elaborate on the situation.

Q. This call of Mr. Barbaglia, that you say was made in November or early December of 1948, was made after you had [68] employed Machinists on the installation of your No. 1 large unit and your No. 1 House Unit, is that right?

A. That is right.

Q. Did the Westinghouse Corporation employ any carpenters on the installation work of those two units? A. Not to my knowledge.

Q. Would you know if the corporation had done such employing of carpenters?

A. Yes, I would.

Hearing Officer Altieri: Is your answer intended to convey the end result no carpenters were employed in the installation, Mr. Budge?

The Witness: That is right.

Hearing Officer Altieri: You say not to your knowledge. You leave an implication that possibly something occurred outside of your knowledge,

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

something may have happened. Is that what you intended to convey by that answer?

The Witness: I intended to convey that someone may have hired a carpenter to build a bench or something of that sort, and I may not have known about it; or a shack or something.

Q. (By Mr. Ryder): With respect to the actual installation work, however, Mr. Budge, so far as you know you did not hire any carpenters, is that a fact? A. That is right.

Q. Mr. Budge, is the Westinghouse Corporation the employer of all of the craft employees engaged on the installation work of a turbine-generator?

Mr. Garrett: That calls for a conclusion.

Hearing Officer Altieri: Overruled. You may answer.

The Witness: May I have the question?

(The question was read.)

Mr. Trautman: I suppose you mean at Redondo.

Mr. Ryder: At Redondo Beach plant.

The Witness: I assume you mean as far as our contract goes.

Q. (By Mr. Ryder): Yes. I mean the riggers that you mentioned previously, the electricians, the machinists, the pipefitters.

Mr. Garrett: There is no evidence they ever employed any of them. It is assuming facts not in evidence, and a leading question.

Hearing Officer Altieri: There was some testimony——

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

Mr. Ryder: That he hired them.

Hearing Officer Altieri: The various crafts, they were hired, Mr. Garrett, if I recall correctly.

Mr. Garrett: That matter was interjected into a leading question, as to the answer, to which it was immaterial.

Hearing Officer Altieri: Is there an unanswered question?

Mr. Garrett: It is clearly not established by the testimony of this witness in this record that he or his company have ever hired any of the classifications.

Mr. Ryder: Mr. Examiner, I might mention here Mr. Budge has previously testified to the fact that he hired, Mr. Scanlon hired certain craft employees relating to this installation work.

Hearing Officer Altieri: I will allow him to answer the question, if he can.

The Witness: We pay a lot of people. We actually pay the employees that we have, such as riggers, pipefitters, machinists, electricians.

Q. (By Mr. Ryder): Have you paid all the employees that you have hired—

A. That is right.

Q. —on the installation work of these units?

A. That is right. [70]

Q. You consider them your employees, do you not? A. That is right.

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

Q. And you can fire them, if you don't like their work, can you not?

Mr. Binkley: Well, we think so. We are not sure.

The Witness: That depends on the union.

Q. (By Mr. Ryder): Outside of the union factor in here, you do have that right to discharge if their work is unsatisfactory?

Mr. Garrett: That calls for a conclusion.

Hearing Officer Altieri: I will sustain the objection. They are your employees to hire and fire as you will, presumably, is that correct?

The Witness: That is correct.

Q. (By Mr. Ryder): You have complete control of these employees during their working days, do you not?

Mr. Garrett: That calls for a conclusion; again leading.

The Witness: That is right.

Hearing Officer Altieri: Answer the question.

The Witness: We are controlling, we have control of their hours and of the time they work and control of the employees; we direct their operations."

WILLIAM L. BUDGE

Transcript, Volume III, page 283 to 285:

"Q. (By Mr. Ryder): Yes. Now, referring back to Mr. Barbaglia's call, when was the next time that any representative of a labor organization contacted you with respect to any job claims, on the

Respondents' Exhibit A—(Continued)

(Testimony of William L. Budge.)

installment work of the House Unit No. 2, if any?

A. As I recall, it was on February the 1st when Mr. Mashburn called me.

Q. What did he say?

A. As I recall the conversation was to the effect that, [71] 'When are you people going to take the Machinists off of this job?'

And my answer to that was that unless it was the customer's wishes that we do so, we were going to make no change at the present time, which Mr. Mashburn then told me he had no other recourse except to take action.

Q. To what job was he referring?

A. He was referring——

Mr. Garrett: That calls for a conclusion.

Hearing Officer Altieri: He may answer.

The Witness: He was referring to the work at the Redondo steam plant on the erection of the No. 2 House Unit.

Q. What action was he referring to?

Mr. Garrett: It calls for a conclusion.

Hearing Officer Altieri: Well, now, do you know what he was referring to?

The Witness: No, I don't.

Hearing Officer Altieri: The action, you do not know what it was that he was referring to?

The Witness: No.

Q. (By Mr. Ryder): You testified that you told Mr. Mashburn that you would take off the men

Respondents' Exhibit A—(Continued)
(Testimony of William L. Budge.)

only if the customer instructed you. What did you mean by that statement?

Mr. Garrett: Objected to as leading, calling for a conclusion; the conversation speaks for itself.

Q. (By Mr. Ryder): Did you explain that statement to Mr. Mashburn?

Hearing Officer Altieri: Did you offer an explanation of that statement to Mr. Mashburn?

The Witness: The only explanation I offered was that it would impair other jobs that I had working at the present time." [72]

SAUL M. SCANLON

Transcript, Volume VI, page 527:

"Q. You didn't talk to any other representatives of any other labor organizations?

A. Just at the time I met Mr. Barbaglia, I testified to before, at Mr. Sheets' office at one meeting. So far as I know that is the only one business representative, outside of Mr. Smith, I guess.

Q. Did you tell Mr. Barbaglia at that time this dispute was entirely new to you, that you hadn't known anything about it before?

A. I don't recall telling him anything like that, it being new. I told him I just didn't have any authority to stop and take the men off, as he directed me to do."

LEM MATTHIAS MERRITT

Transcript, Volume VIII, page 860 to 867:

“Q. (By Mr. Garrett): Mr. Merritt, in July of 1946 were you connected with the Millwrights Local 1607? A. Yes, I was.

Q. What position did you hold with them at that time?

A. I was the business representative for the Millwrights.

Q. And sometime in that period between July and September 1946, do you recall going to the harbor steam plant?”

LEM MATTHIAS MERRITT

Transcript, Volume VIII, page 867 to 869:

“A. No, Building Trades in Los Angeles, so shortly after that, I don't remember how long, it might have been a month or so, the second unit in that thing was pretty well along and begun to get ready for installation, and I think it was on the floor, and Gene Boyd and myself went down to see the turbine [73] as it was being got ready to set up, and we met the man in charge.

Q. The man in charge for whom?

A. Of setting of the turbine, as I recall they were the Westinghouse people, and I think the man—I am not really sure about the fellow's name, but I think it was Scanlon, I am not sure whether it was or not. I think I would know the man if I saw him, and I have not seen him in this hearing,

Respondents' Exhibit A—(Continued)

(Testimony of Lem Matthias Merritt.)

and I looked around there and I have not seen him.

Mr. Binkley: I don't think Scanlon is here right now.

The Witness: I never met him but one time, and Boyd introduced me and he told me who he was, and then in this meeting we had quite a conversation about work, and Mr. Boyd told him that in the opinion of the Building Trades that work belonged to the Millwrights.

Mr. Binkley: Just a minute. Could we have the persons present at this conversation? Boyd and Scanlon and who else were present?

Q. (By Mr. Garrett): Were there any other people present at that conversation?

A. Those were the only people I talked to. There were a lot of people around there, but the three of us were doing the talking.

Q. Has Mr. Boyd subsequently died?

A. That is right. He died shortly after that, I would say a month or two after this, and Mr. Boyd felt that so far as that work was concerned it belonged in the opinion of the Building Trades, to the Millwrights, and he said, Mr. Scanlon if it was Scanlon, I am not sure about that, he said that he didn't care what the Building Trades thought, that the work belonged to the Machinists and he had been doing it with [74] Machinists and he expected to continue to do it with Machinists, Westinghouse always employed Machinists, and as I

Respondents' Exhibit A—(Continued)

(Testimony of Lem Matthias Merritt.)

recall Mr. Boyd told him that he didn't think Westinghouse had always employed Machinists, and this was one particular job that he was going to find out whether or not they could employ them on the work on that job, and they had quite a little argument over it. Of course I was more or less as a standby, I just stood there and listened, but I didn't have very much to say in the conversation, because after all I was down there with the Building Trades.

Hearing Officer Altieri: You have answered the question.

The Witness: That is about all I have to say about it.

Q. (By Mr. Garrett): How long after that did you remain business agent for the Millwright Local 1607?

A. Well, I was the business agent up until June of 1947, I guess, and then I think three months after that I was assistant business agent. That is as I recall it. I could go back and look it up, and I don't remember for sure."

LEM MATTHIAS MERRITT

Transcript VIII, page 873 to 874:

Q. And what methods did you go about protesting the work?

A. Well, I usually left that up to the Building Trades.

Q. How does the Building Trades go about protesting the work, sir?

Respondents' Exhibit A—(Continued)
(Testimony of Lem Matthias Merritt.)

A. I suggest that you ask them. They can probably tell you better than I can.

Q. Don't you know?

A. Well, I know some of the things they do, yes.

Q. 1607 at the time of your representation of that local was an affiliate with the Building Trades Council?

A. That is right. [75]

Q. And therefore wouldn't you know how the Building Trades Council would help Local 1607 in protesting the work that Local 1607 thinks belongs to it?

A. Yes, I think I would know the procedure.

Q. What would the procedure be, sir?

A. Well, might take different courses, but as a general rule if there is a dispute arising before the—any affiliate of the Building Trades, the Building Trades would probably call a meeting of the people in some respects to get down to the bottom of the thing, possibly representatives for the Machinists, representatives of the Millwrights, maybe the employers, and so forth."

HERMAN BARBAGLIA

Transcript, Volume VIII, pages 969 to 970:

"Q. (By Mr. Garrett): What position do you hold?

A. I am now representative of Millwrights Local 1607.

Q. Since when?

A. Since July 8th, 1949."

Respondents' Exhibit A—(Continued)

HERMAN BARBAGLIA

Transcript, Volume VIII, pages 974 to 977:

“Q. At the time you talked to Mr. Lyons, did you know who was going to install the next Westinghouse unit?

A. I didn't know who was going to install it. I was told that there was a——

Mr. Ryder: Just a minute. I think we ought to establish a foundation for this conversation.

Q. (By Mr. Garrett): Who told you?

A. Mr. Lyons.

Q. Did you have at that time, aside from this conversation with Mr. Lyons that you were going to tell me about, did you [76] make inquiries about who was going to install the next house unit?

A. That is right. I went to see Mr. Lyons about the installation of the next house unit.

Q. Because you wanted to go out and see whoever had control to find out who was going to install it, is that right? A. That is right.

Q. All right. What did Mr. Lyons tell you about it?

A. I believe that Mr. Lyons told me that the situation was going to be the same as on the previous unit, that——

Q. That is the previous house unit or the previous line unit?

A. All three units there, the house unit and two 60,000 units, one would be set by G.E. and the other two would be set by Westinghouse.

Respondents' Exhibit A—(Continued)
(Testimony of Herman Barbaglia.)

Q. Did you make any representations to Mr. Lyons as to who that work belonged to?

A. I did.

Q. Tell us the conversation in substance.

A. I told Mr. Lyons at that time that that work came under our jurisdiction and that I was going to contend for it, and Mr. Lyons then informed me that he had no power or authority to give me an answer as to—about my people doing it, other than I had the privilege to contend for it. With that I did state I would contend for it, and I told him that.

Q. Did you use that word contend?

A. That is right. I told him that and with that we stopped our conversation and then from there I went on and went through the job and went on back and went in to see Mr. Mashburn as to what position the Building Trades was going to take in contending that work belonged to the Millwrights. At the time I don't remember what——

Q. I take it there were no Machinists on the job at that time? [77]

A. No, this was in September, and there was no, no. In fact I was informed by Mr.—I believe by Mr. Lyons that there would not be any units installed there until somewhere in June of this year.

Q. No units installed until June of this year?

A. Yes, those three units that were in here now, the G.E. and Westinghouse unit, that they were

Respondents' Exhibit A—(Continued)

(Testimony of Herman Barbaglia.)

not scheduled to be installed until June of this year.

Q. 1949? A. That is right.

Q. When did you find out they were going to install a house until prior to June 1949?

A. I finally found out, I think the record shows the second. I found out about two weeks before that and that the schedule was being advanced, and that the new equipment—it was before that, that the house unit would be set, I believe, the 31 of January.

Q. Now, before we go on to that, have you told us all that took place in the conversation that you had with Mr. Lyons during the holiday season?

A. That was the only time I talked to Lyons about that.

Q. Have you given us the whole conversation or was there something more said by either one of you?

A. Well, I don't remember now what—how many words was said. I am only giving you the point that I had made my contention that I had notified Stone and Webster on this or Mr. Lyons.

Q. Have you given us the substance of the entire conversation already, or is there something more remaining for you to tell us about?

A. No, that is all, I guess, as far as Mr. Lyons is concerned." [78]

Respondents' Exhibit A—(Continued)

De Minimis

FLOYD E. SMITH

Transcript, Volume VI, page 634:

“Q. What were the names of the men you referred to on the second house unit?

A. Lour Merritt and Ralph Sinclair.”

Further affiant saith not.

/s/ ARTHUR GARRETT.

Subscribed and sworn to before me this 16th day of May, 1949.

[Seal] /s/ ELIZABETH B. DODGE,

Notary Public in and for the County of Los Angeles, State of California. [79]

Exhibit 1

December 29, 1947.

Mr. S. M. Scanlon,
Field Supervisor.
Westinghouse Electric Co.,
153 Corona Ave.,
Long Beach, 3, California.

Dear Sir:

This letter is to confirm our verbal conversation of last week concerning hourly rates, shift work on construction jobs.

Regular Daylight Shift: An eight and one-half hour period less thirty minutes for meals on the employees time. Pay for a full shift period shall be a sum equivalent to eight times the regular hourly rate with no premium.

Respondents' Exhibit A—(Continued)

Second Shift: An eight hour period less thirty minutes for meals on employers time. Pay for a full second shift period shall be a sum equivalent to eight times the regular hourly rate.

Where there are three shifts working each shift shall work an eight hour period less thirty minutes for meals on employees time. Pay for a full shift period on any shift shall be a sum equivalent to eight times the hourly rate.

Hoping this information answers your questions and if you need more information please notify me.

Yours truly,

FLOYD E. SMITH,

Business Representative.

Copy to:

W. L. BUDGE

Exhibit 2

Mr. S. M. Scanlon,
Field Supervisor,
Westinghouse Electric Co.,
153 Corona Ave.,
Long Beach, 3, California.

Dear Sir:

This letter is to confirm our conversation of the other day concerning the hourly increase of Twenty-five (25) cents per hour for Journeymen, Ten (10) cents per hour for Helpers and Thirty-five (35) cents per hour for Foremen.

As I stated to you the increase would go into effect January 15, 1948. As the 15th of January

Respondents' Exhibit A—(Continued)
comes on Thursday, we will extend the date to
January 19, 1948.

Day Shift	\$2.25
Journeyman Machinists	1.60
Machinists Helpers	1.60
Machinists Foremen	2.50

Swing Shift: Same hourly rate as day shift
with men working $7\frac{1}{2}$ hours per shift and being
paid for 8 hours.

Graveyard Shift: Same hourly rate as day shift
with men working 7 hours per shift and being paid
for 8 hours.

Overtime rate is double the hourly rate for all
shifts working in excess of 8 hours in any one day,
or more than 40 hours in any one week. All Satur-
days, Sundays and Holidays are paid for at the
overtime rate.

The following companies have agreed to pay the
new rate:

General Electric Co.

Gross Press Co.—(On Press Telegram)

J. B. Gill Construction Co.

Yours truly,

FLOYD E. SMITH,

Business Representative.

Copy to:

W. L. BUDGE

Respondents' Exhibit A—(Continued)

Exhibit 3

October 21, 1947.

Mr. William Long,
Accounting Department,
Westinghouse Electric Company,
420 South San Pedro Street,
Los Angeles, California.

Dear Sir:

The following established hourly wage scale applies to members of the International Association of Machinists employed on construction project:

Day Shift

Journeymen Machinists	\$2.00
Machinist Helpers	1.50
Machinist Foremen	2.15

Swing Shift, same hourly rate with men working 7½ hours per shift and being paid for 8 hours.

Graveyard Shift, same hourly rate with men working 7 hours per shift and being paid for 8 hours.

Overtime rate is double the hourly rate for all shifts working in excess of 8 hours in any one day, or more than 40 hours in any one week. All Saturdays, Sundays and Holidays are paid for at the overtime rate.

Yours truly,

FLOYD E. SMITH,

Business Agent,

I.A. of M. No. 1235.

FES:hl

Respondents' Exhibit A—(Continued)
Exhibit 4

July 27, 1947

I. A. M. Lodge 1235,
Mr. Floyd E. Smith,
Business Agent.

This letter is to confirm our verbal conversation concerning the rates now being paid the Machinists and Machinist Helpers. At the present time the rates are: Machinist \$2.00 per hour and Machinist Helper \$1.50 per hour.

W. L. BUDGE,
/s/ WILLIAM L. BUDGE,
Steam Service Supervisor,
Westinghouse Electric Corp.

Respondents' Exhibit A—(Continued)
Exhibit 5

Westinghouse Electric Corporation

Tel. Trinity 8331,
420 So. San Pedro Street,
Los Angeles Calif.,
January 22, 1948.

Mr. Floyd E. Smith,
Business Representative,
International Association of Machinists,
Long Beach Lodge No. 1235,
726 Elm Avenue,
Long Beach, California.

Dear Sir:

In line with your letter of January 14, we wish to confirm the fact that we are now paying men of the Machinist Union \$2.25 an hour for Journeymen, and \$1.60 an hour for Helpers.

Very truly yours,

W. L. BUDGE

Steam Service Supervisor,
Engineering & Service Division.

Admitted May 16, 1949.

PLAINTIFF'S EXHIBIT NO. 1

United States of America
National Labor Relations Board

Case No. 21-CD-19

I, Frank M. Kleiler, Executive Secretary of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of the Decision and Determination of Dispute

In the Matter of

LOS ANGELES BUILDING and CONSTRUCTION TRADES COUNCIL, A.F.L., and LLOYD A. MASHBURN, ITS AGENT; MILLWRIGHT and MACHINERY ERECTORS LOCAL 1607, of the UNITED BROTHERHOOD OF CARPENTERS and JOINERS of AMERICA, A.F.L., and HERMAN F. BARBAGLIA, ITS AGENT

and

INTERNATIONAL ASSOCIATION OF MACHINISTS, for its LOCAL LODGE 1235

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this 12th day of May, A.D. 1949, at Washington, D. C.

[Seal]

/s/ FRANK M. KLEILER,
Executive Secretary.

Plaintiff's Exhibit No. 1—(Continued)

United States of America
Before the National Labor Relations Board

Case No. 21-CD-19

In the Matter of

LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL, A.F.L., AND
LLOYD A. MASHBURN, ITS AGENT;
MILLWRIGHT AND MACHINERY ERECTORS LOCAL 1607, of the UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L., AND
HERMAN F. BARBAGLIA, ITS AGENT

and

INTERNATIONAL ASSOCIATION OF MACHINISTS, for its LOCAL LODGE 1235

DECISION AND
DETERMINATION OF DISPUTE

Statement of the Case

This proceeding arises under Section 10(k) of the Act, as amended by Labor Management Relations Act, 1947, which provides that "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph 4(D) of Section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen. . . ."

Plaintiff's Exhibit No. 1—(Continued)

On February 2, 1949, International Association of Machinists, on behalf of its Local Lodge 1235, herein called the Machinists, filed with the Regional Director for the Twenty-first Region a charge alleging that Los Angeles Building and Construction Trades Council, A.F.L., herein called the Trades Council, and Lloyd A. Mashburn, its agent, had engaged in and were engaging in certain activities proscribed by Section 8(b)(4)(D) of the amended Act. It was alleged, in substance, that they engaged in a strike, with an object of forcing and requiring Westinghouse Electric Corporation, herein called Westinghouse, and/or Stone and Webster Engineering Corporation, herein called Stone, to assign particular work to members of "affiliates" of United Brotherhood of Carpenters and Joiners of America, A.F.L.¹

¹The relevant portions of Section 8 of the Act are as follows:

(b) It shall be an unfair labor practice for a labor organization or its agents——

* * *

(4) to engage in, or to induce or encourage the employees of any employed to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: . . .

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular

Plaintiff's Exhibit No. 1—(Continued)

Pursuant to Sections 203.74 and 203.75 of the Board's Rules and Regulations, Series 5, as amended, the Regional Director investigated the charges and provided for an appropriate hearing upon due notice to all the parties.² Thereafter, a

trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to any order or certification of the Board determining the bargaining representative for employees performing such work: . . .

²Millwright and Machinery Erectors Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L., herein called the Millwrights, and Herman F. Barbaglia, its agent, appeared at the opening of the hearing on March 10, 1949, and moved for a 10-day continuance, on the ground that they had not been made parties respondent until the service of an amended charge a day earlier. The hearing officer denied this motion, without prejudice to its renewal at any time the Millwrights "claimed surprise." Counsel for the Millwrights thereupon withdrew from the hearing, and now alleges a denial of due process. We find that the Millwrights, which the records shows was the only "affiliate" of the Carpenters involved herein, was duly apprised of this proceeding by service of the original notice of hearing. Moreover, the Millwrights refused the hearing officer's express reservation to it of the right to renew the motion if "surprise" were claimed.

The Trades Council and the Millwrights also moved the Board to strike the "Second Amended Charge" or, alternatively, to remand the proceeding for further hearing on new matter raised by the

Plaintiff's Exhibit No. 1—(Continued)

hearing was held before James V. Altieri, hearing officer, on March 10, 11, 14, 15, 17, 18, 21, 22, 23, and 24, 1949. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. The rulings of the hearing officer made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board; the Machinists, the Millwrights, and the Trades Council did so. The requests for oral argument of the Trades Council and the Millwrights are denied because the record and briefs, in our opinion, adequately present the issues and positions of the parties.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The business of the companies

Westinghouse Electric Corporation maintains, inter alia, two plants in the Commonwealth of Pennsylvania, where it is engaged in the manufacture of turbines and generators. The record reveals that a substantial amount of the raw material used

Second Amended Charge. We do not consider the second Amended Charge, which was not filed until after the close of the hearing, as part of the record before us, and we do not, therefore, find it necessary to pass upon the motion at this time.

Plaintiff's Exhibit No. 1—(Continued)

in the production of these turbines and generators comes from outside the Commonwealth of Pennsylvania. The turbine generator with which the instant dispute is concerned was shipped to California by Westinghouse from its Pennsylvania plants, and is being installed by Westinghouse in California. We have heretofore found that Westinghouse is engaged in commerce.³

Southern California Edison Company, herein called Edison, is a utility company, and delivers electric power to consumers in southern California. During 1948, approximately 39 per cent of its total sales was to industrial consumers, a substantial number of which are engaged in commerce. It purchases much of its equipment, including the turbine generator here involved, from outside the State of California. We have heretofore found that Edison is engaged in commerce.⁴

We find, contrary to the contention of the Trades Council, that the companies are engaged in commerce within the meaning of the Act.

2. The dispute

a. The facts

Early in 1946, Edison entered into contracts with various contractors for the construction of a new

³Matter of Westinghouse Electric Corporation, 72 N.L.R.B. 60.

⁴Matter of Southern California Edison Company, 70 N.L.R.B. 81.

Plaintiff's Exhibit No. 1—(Continued)

power plant at Redondo Beach, California. Chief among these contractors was Stone, which also acts in an advisory capacity to Edison for the entire project. Before construction of the power plant began, Edison had made arrangements for the purchase and installation of five steam turbine generator units. Two of these generators have already been installed, one each by Westinghouse and General Electric Company; the third was being installed by Westinghouse when the dispute with which we are now concerned began; the fourth is to be supplied and installed by General Electric, and operations on it are scheduled to begin about June 1, 1949; and the fifth is to be supplied and installed at some future date by Westinghouse.

Stone and the other contractors working on the Redondo Beach project, with the exception of Westinghouse and General Electric, have employed only Trades Council members since the construction began. Westinghouse and General Electric had installed the first two generators using two Machinists' members, as well as some Trades Council members. A short time before the installation of the third generator was scheduled to begin, representatives of the Trades Council and the Millwrights approached Stone and attempted to persuade Stone to have Westinghouse replace the Machinists with Millwrights. Stone disclaimed responsibility for the employment of these Machinists, saying that they were Westinghouse employees. On January 31,

Plaintiff's Exhibit No. 1—(Continued)

1949, installation work on this third generator started. Shortly thereafter, a Trades Council representative, Mashburn, asked William Budge, supervisor of the installation for Westinghouse, to replace the Machinists with Millwrights. Budge refused, whereupon Mashburn said that he had no other recourse "except to take action."

On February 2, 1949, the Trades Council called a general strike of all the building trades employees on the project to enforce its demand on Westinghouse. All of the approximately 650 employees walked out, except the 2 Machinists employed by Westinghouse. The latter worked until February 11, 1949, when Edison requested Westinghouse to cease its installation work until the dispute was resolved. At the time of the hearing, no further installation work had been done on the generator, although work on the rest of the project had been resumed.

b. Contentions of the parties

Neither Edison nor Stone has advanced any contentions respecting the merits of the dispute, nor has the Millwrights. Westinghouse, although it likewise advanced no contentions, is clearly not a disinterested party; its refusal to accede to the Trades Council's request precipitated the dispute.

The Machinists contends that the work tasks involved in the installation of generators is properly the craft and trade work of its members, and that

Plaintiff's Exhibit No. 1—(Continued)

it has satisfactorily supplied employees for all the generator installation work on the project, including the two completed installations.

The Trades Council contends that the Board is without jurisdiction to determine the dispute for three reasons: (1) this case does not involve a "jurisdictional dispute," but presents a question of representation; (2) the dispute is not one "affecting commerce;" and (3) Section 8(b)(4)(D) is unconstitutional. The Trades Council also asserts that, in any event, the Millwrights is entitled to the work in question for various reasons: (1) the work falls within the jurisdiction and the trade and craft skills of its members; (2) the Trades Council has a right, under the provisions of its contract with Stone, to demand conformance from Westinghouse with the terms of that contract; (3) A. F. of L. decisions, made while the Machinists was affiliated with the A. F. of L., awarded work of the type in question to the Millwrights; (4) as the Building Trades Department of the A. F. of L. (with which the Machinists was never affiliated) is the only body that can effectively determine a "jurisdictional dispute" between subordinate locals in the construction field, no non-affiliated union should be permitted to supply workers in this field; (5) the existing assignment of work by Westinghouse to the Machinists is immaterial; otherwise the employer could "oust the Board itself of jurisdiction;" (6) as there are approximately 650 Trades Council members on

Plaintiff's Exhibit No. 1—(Continued)

the project, and the dispute involves only 2 employees not members of the Trades Council, the purposes of the Act will "be better effectuated" by a determination by the Board that will compel Westinghouse to conform its employment practices to those of the other contractors on the job; and (7) this Section 10(k) proceeding should be dismissed as "de minimis" because the dispute involves only 2 out of 650 employees.

c. Applicability of the statute

The Board has held in several cases⁵ that where a labor organization is charged with forcing or requiring an employer to assign particular work to members of a particular labor organization rather than to employees of his own who are members of another labor organization, such conduct comes

⁵Matter of Moore Drydock Company, 81 N.L.R.B., No. 169; Matter of Juneau Spruce Corporation, 82 N.L.R.B., No. 71; Matter of Irwin-Lyons Lumber Company, 82 N.L.R.B., No. 107.

Members Houston and Murdock, who dissented in each of these cases, deem themselves bound to concur in the present decision. Moreover, they agree entirely with the observation, *infra*, that "the employer in most cases will have resolved by his own employment policy, the question as to which organization shall be awarded the work." It is for this reason, as these dissenting Members have consistently pointed out, that they believe the Board should eschew the pretense of deciding such matters under Section 10(k) of the Act, in cases like this when the issue is predetermined by the employer.

Plaintiff's Exhibit No. 1—(Continued)
within the purview of Section 8(b)(4)(D) and the Board is "empowered and directed to hear and determine the dispute."

On the record before us, it is clear that the "dispute" in this proceeding involves efforts by the Respondents to compel Westinghouse to assign certain installation work to members of the Millwrights, although the work was being performed by Westinghouse employees who were members of the Machinists. We find, therefore, that under the language of the Act as presently written, the dispute in question is properly before us for determination.⁶

d. The merits of the dispute

At the time the dispute began, Westinghouse was employing two machinists and two riggers on the project; the former were members of the Machinists, and the latter were members of an affiliate of the Trades Council other than the Millwrights. Westinghouse had assigned the work in dispute to the Machinists. The Respondents insisted that Westinghouse assign the work to the Millwrights. The Board said in *Matter of Juneau Spruce Corporation*, *supra*:

As we read Sections 8 (b) (4) (D) and 10 (k), these Sections do not deprive an employer of the right to assign work to his own employees; nor

⁶The Trades Council's contention that Section 8(b)(4)(D) is unconstitutional is also rejected. *Matter of Rite-Form Corset Company, Inc.*, 75 N.L.R.B. 174.

Plaintiff's Exhibit No. 1—(Continued)

were they intended to interfere with an employer's freedom to hire, subject only to the requirement against discrimination as contained in Section 8 (a) (3).

And in the Irwin-Lyons case, *supra*, we held that the questions of tradition or custom in the industry is not a governing factor “. . . where a union with no bargaining or representative status makes demands on an employer for the assignment of work to the exclusion of the employer's own employees who are performing the work . . .” None of the contentions here advanced impels us to reach a different conclusion in this case. Westinghouse had no collective bargaining agreement with any labor organization concerning the employees involved. The fact that Stone, another contractor on the project, was operating under an agreement with the Trades Council, does not subject Westinghouse to any of the obligations of that agreement. It is clear that Westinghouse was not under contract with Stone, and was free to make use of its own employees for the installation, despite the fact that the other employers on the project used Trades Council employees.⁷

We find, accordingly, that neither the Trades Council nor the Millwrights is lawfully entitled

⁷As Westinghouse was not a party to any A. F. of L. awards of jurisdiction, we find no merit to the Trades Council's contention that such awards in its favor are determinative in this case.

Plaintiff's Exhibit No. 1—(Continued)

to require Westinghouse to assign the work in dispute to members of the Millwrights rather than to employees of Westinghouse who are members of the Machinists.

We are not by this action to be regarded as “assigning” the work in question to the Machinists. Because an affirmative award to either labor organization would be tantamount to allowing that organization to require Westinghouse to employ only its members and therefore to violate Section 8 (a) (3) of the Act, we believe we can make no such award. In reaching this conclusion we are aware that the employer in most cases will have resolved, by his own employment policy, the question as to which organization shall be awarded the work. Under the statute as now drawn, however, we see no way in which we can, by Board reliance upon such factors as tradition or custom in the industry, overrule his determination in a situation of this particular character.

Determination of Dispute

On the basis of the foregoing findings of fact and the entire record in this case, the Board makes the following determination of the dispute, pursuant to Section 10 (k) of the amended Act:⁸

⁸The Machinists contend that any determination by the Board should also include future installation work at the Redondo Beach project of Edison. We find no merit to that contention, and shall restrict our determination here to the dispute before us.

Plaintiff's Exhibit No. 1—(Continued)

1. Los Angeles Building and Construction Trades Council, A.F.L., and Lloyd A. Mashburn, its agent, and Millwright and Machinery Erectors Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L., and Herman F. Barbaglia, its agent, are not, and have not been, lawfully entitled to force or require Westinghouse Electric Corporation to assign work on the installation of steam turbine generators at Southern California Edison Company's plant at Redondo Beach, California, to members of Millwright and Machinery Erectors Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L., rather than to employees of Westinghouse Electric Corporation who are members of International Association of Machinists, Local Lodge 1235.

2. Within ten (10) days from the date of this Decision and Determination of Dispute, each of the Respondents may notify the Regional Director for the Twenty-first Region, in writing, what steps the Respondents have taken to comply with the terms of this Decision and Determination of Dispute.

Signed at Washington, D.C., this 11th day of May, 1949.

PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

Plaintiff's Exhibit No. 1—(Continued)

JAMES J. REYNOLDS, JR.,

Member.

ABE MURDOCK,

Member.

J. COPELAND GRAY,

Member.

[Seal]

NATIONAL LABOR

RELATIONS BOARD

Admitted May 16, 1949.

PLAINTIFF'S EXHIBIT No. 2

In the United States District Court for the
Southern District of California, Central Division

No. 9629-Y

HOWARD F. LEBARON, Regional Director of
the Twenty-First Region of the National Labor
Relations Board, for and on Behalf of the
National Labor Relations Board,

Petitioner,

vs.

LOS ANGELES BUILDING AND CONSTRUCTION
TRADES COUNCIL; and Its Agent
LLOYD A. MASHBURN; MILLWRIGHT
AND MACHINERY ERECTORS, LOCAL
1607, OF UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
A.F.L.; and Its Agent HERMAN BAR-
BAGLIA,

Respondents.

Plaintiff's Exhibit No. 2—(Continued)

AFFIDAVIT OF JEROME SMITH

State of California,

County of Los Angeles—ss.

Jerome Smith, being first duly sworn, deposes and says:

That he is an attorney, duly licensed in the Courts of States of Colorado, Iowa, Missouri and the Eighth Circuit Court of Appeals, and is attorney for petitioner herein.

That pursuant to the provisions of Section 10-k of the National Labor Relations Act, as amended June 23, 1947, (61 Stat. 136 et seq; 29 U.S.C.A. Sup. I Sec. 141 et seq) hereinafter called the Act, the National Labor Relations Board, hereinafter called the Board, conducted a hearing in Los Angeles, California, on March 10, 11, 14, 15, 17, 18, 21, 22, 23 and 24, 1949, before James V. Altieri, hearing officer designated to conduct said hearing by said Board, upon the charge and first amended charge attached to the petition herein, pursuant to a notice of hearing issued by said Board. That in said hearing evidence under oath, both oral and documentary, was adduced, and an official transcript made and returned to and filed with said Board, a copy of which is in affiant's possession. That in said hearing affiant represented Robert N. Denham, General Counsel, National Labor Relations Board. That the statements of witnesses set forth below were made at said hearing under oath, and reported in said transcript; transcript references

Plaintiff's Exhibit No. 2—(Continued)

are to that transcript. The attorneys whose names appear in the excerpts are Garrett, representing Los Angeles Building and Construction Trades Council and Lloyd A. Mashburn, respondents here; Smith, Jerome, representing the Board; Binkley, representing Westinghouse; Trautman, representing Stone and Webster; Smith, William French, representing Edison; and Ryder, and White, representing the International Association of Machinists, also known as I.A.M.

TESTIMONY OF LLOYD A. MASHBURN

Direct Examination

Transcript, Volume VIII, page 1211:

By Mr. Garrett:

“Q. State your name, please.

A. Lloyd Mashburn.

Q. And are you connected with any labor organization?

A. I am secretary of the Los Angeles Building and Construction Trades Council, among other connections.

Transcript, Volume VIII, page 1240:

Q. (By Mr. Garrett): Now, at that discussion you had in August of 1947, at the plant, with Mr. Cleary and Mr. Sheets, did they tell you anything about the nature of the contract for the installation of the turboelectric units?

A. Yes, they told me they had no control over

Plaintiff's Exhibit No. 2—(Continued)

(Testimony of Lloyd A. Mashburn.)

the contract; that it was directly General Electric, Westinghouse and Edison Companies.

Transcript, Volume VIII, page 1242:

Q. Now, in this August, 1947, interview, did either Mr. Sheets or Mr. Cleary tell you what they were going to do about the employment of machinists by Westinghouse, if anything?

A. No, I don't believe they did. I made the request for them to intercede with the Edison Company, to have the work done by A.F.L. men, but I don't believe there were any promises made as to what they could or couldn't do.

Q. Was there any discussion at that time about what your attitude would be?

A. Yes; I told them we would have to insist that Millwrights do the work.

Q. Did you have any personal interviews with either Mr. Cleary or Mr. Sheets on the subject again prior to the time you wrote them the letter which is Building Trades' Exhibit No. 6? [Building Trades Exhibit No. 6 is attached hereto and by this reference made part of this affidavit.]

A. I discussed it several times with Mr. Sheets or Mr. Lyon over the phone, but no personal meetings, except the two that have been mentioned, that I can remember.

Transcript, Volume VIII, page 1245 and 1246:

Q. Did anything else occur at the Associated

Plaintiff's Exhibit No. 2—(Continued)

(Testimony of Lloyd A. Mashburn.)

General Contractors' meeting with Mr. Sheets, Mr. Boyce in December of 1948—was anything else said by any of the parties that you haven't told us about?

A. I would say we had a two-hour discussion there about the terms of the contract, the settlement of jurisdictional disputes, and a general discussion of the whole picture, and how it was going to affect the progress of the job. We spent two hours discussing it. It was all concentrated upon this dispute between the Millwrights and the Machinists.

Transcript, Volume VIII, page 1248:

Q. Were you here when Mr. Budge testified as to the substance of that telephone conversation he had with you on February 1st?

A. Yes, I was here.

Q. What was the substance of that conversation you had with Mr. Budge?

A. About as he related it, with the exception we did discuss the mechanical end of it. He felt we didn't have qualified mechanics. We did have some discussion about that.

Q. What was that discussion?

A. He told me that the Westinghouse people had employed Millwrights in Imperial Valley, or, at least, they were caused to be employed upon some installation of their work, and they were not satisfied with their work. We had some discussion about that; not too long.

Plaintiff's Exhibit No. 2—(Continued)
(Testimony of Lloyd A. Mashburn.)

Transcript, Volume VIII, page 1249:

Q. So at the termination of this conversation on February 1st with Mr. Budge on the telephone, what position was he taking with respect to you where the Millwrights were to be used?

A. He said Edison Company had not requested him to employ any certain type of people and he was going to, insofar as he knew, employ machinists on the type of work we were discussing.

Q. Did he give any reasons for making that decision?

A. The only illustration he gave me was his experience at Imperial, being dissatisfied with the Millwrights, I think."

TESTIMONY OF HERMAN BARBAGLIA Cross-Examination .

Transcript, Volume VII, page 1005 and 1006:

"Q. Now, Mr. Barbaglia, you have testified on direct examination that in December, 1948, you had a conversation with Mr. Lyon of Stone & Webster, at which time you asked him who was going to install this Westinghouse unit out of which this dispute arose?

A. Wait a minute. I don't believe I said Westinghouse unit.

Q. What did you say?

Plaintiff's Exhibit No. 2—(Continued)
(Testimony of Herman Barbaglia.)

A. If I said anything to him, I asked him who was going to install the rest of the equipment.

Q. What would you be referring to, then, if not to this unit?

A. No. I was referring to all units, the General Electric and the two Westinghouse units.

Q. Including this unit which is involved in this recent work stoppage?

A. That is the Westinghouse unit, so that would include it, yes.

Q. Mr. Lyon told you that as far as he knew that the employment situation would be the same on that unit, did he not?

A. Something to that effect.

Q. Then you told him that you thought that work was under the Millwrights jurisdiction and that you were going to contend for it, did you not?

A. I didn't say I thought. I told him it was my work and that I was going to contend for it.

Q. And he told you that as far as he was concerned Westinghouse was putting it in and it would be done the same way it had been in the past, is that right?

A. As far as he knew, yes.

Transcript, Volume VII, Page 1011 and 1012:

Q. (By Mr. Binkley): At any rate, at some time prior to December, 1948, you were aware, were you not, that you were going to contend against the I.A.M. machinists for the work of installation of those generators at Redondo, is that right?

Plaintiff's Exhibit No. 2—(Continued)
(Testimony of Herman Barbaglia.)

A. I wasn't contending against any organization. I was contending the work for my organization."

Further affiant saith not.

/s/ JEROME SMITH.

Subscribed and sworn to before me this 17th day of May, 1949.

[Seal] /s/ ANN RAETZ,
Notary Public.

My Commission Expires Aug. 31, 1952.

Phone Michigan 0768 L. A. Mashburn, Sec'y.
Building Trades #6
Los Angeles

Building and Construction Trades Council
Chartered June, 1923, by the
Building and Construction Trades Department
American Federation of Labor
Labor Temple, Room 202 538 Maple Avenue
Los Angeles 13, Calif.

Noted Dec. 14, 1948

W. L. Sheets

Mr. T. A. Lyons

Stone and Webster Engineering Corp.,
601 West 5th Street,
Los Angeles, Calif.

Dear Mr. Lyons:

I have been requested by the Millwrights Local No. 1607 to write you regarding the controversy

Plaintiff's Exhibit No. 2—(Continued)

which existed over the installation of Machinery and equipment on the first portion of the Redondo Steam Plant and to advise you that, as we did before, the jurisdiction of the installation of machinery, in accordance with decisions already rendered, is the work of the Millwright and that they are asking you to make arrangements with Westinghouse or General Electric or whoever is going to install the turbines and work of a similar character, over which the controversy existed before, to have this work done by the Millwrights.

They also advise me that both of these companies, General Electric and Westinghouse, are employing their members throughout the rest of the State of California and they, therefore, see no reason why a continuation of the position taken by these companies formerly should be carried on.

In order to avoid any controversy in this matter, we ask that you see what can be done to see that the Millwrights' jurisdiction is retained throughout your entire job.

Very truly yours,

/s/ L. A. MASHBURN,

Secretary, L. A. Bldg. and
Constr. Trades Council.

Admitted May 17, 1949.

[Endorsed]: Filed May 17, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 109, inclusive, contain the original Petition for an Injunction Under Section 10(1) of the National Labor Relations Act, as Amended; Rule to Show Cause; Respondents' Return to Rule to Show Cause, together with Affidavit of Lloyd A. Mashburn in Opposition to Rule to Show Cause and Exhibits thereto; Order on Decision; Opinion; Memorandum in Opposition to Proposed Findings of Fact, Conclusions of Law, Decree and Temporary Injunction; Findings of Fact and Conclusions of Law; Decree; Notice of Appeal; Designation of Record on Appeal and Affidavit of Service; Motion and Order Extending Time to Docket Appeal; and Designation of Additional Portions of the Record on Appeal with Affidavit of Service which, together with the original plaintiff's Exhibits 1 and 2 and Respondents' Exhibit A, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 12th day of October, A.D. 1949.

EDMUND L. SMITH,

Clerk.

[Seal] By /s/ THEODORE HOCKE,

Chief Deputy.

[Endorsed]: No. 12378. United States Court of Appeals for the Ninth Circuit. Los Angeles Building and Construction Trades Council, and Its Agent Lloyd A. Mashburn; Millwright and Machinery Erectors, Local 1607, of the United Brotherhood of Carpenters and Joiners of America, A.F.L., and Its Agent Herman Barbaglia, Appellants, vs. Howard F. LeBaron, Regional Director of the Twenty-first Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed October 14, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12378

LOS ANGELES BUILDING AND CONSTRUCTION TRADES COUNCIL; and Its Agent LLOYD A. MASHBURN; MILLWRIGHT AND MACHINERY ERECTORS, LOCAL 1607, OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.; and Its Agent HERMAN BARBAGLIA,

Appellants,

vs.

HOWARD F. LEBARON, Regional Director of the Twenty-first Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board,

Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY

I.

If it was intended by Congress that Section 8(B) (4)(D) Title I of the Labor Management Act of 1947 should prohibit a union and its members to strike to win from an enemy union or from non-union employees contested work opportunities or to refuse to perform services for the employer in that situation, said section of said Act is in that re-

spect unconstitutional and void because in violation of the First, Fifth and Thirteenth Amendments of the Constitution of the United States.

II.

The injunction appealed from was issued upon evidence insufficient to warrant the issuance thereof.

III.

Petitioner below showed no probable, sufficient or any cause or finding thereof to apply for the injunction appealed from.

IV.

The trial court erred in issuing the injunction on proof that petitioner had reasonable cause to believe that the charge was true and a complaint should issue, such showing being sufficient on charges of violation of Sections 8b4A, 8b4B and 8b4C of the National Labor Relations Act as amended, hereinafter called the Act, but not on charges of violation of Section 8b4D.

V.

The trial court had no jurisdiction to entertain a petition for injunction within the time allowed for voluntary compliance with the decision of the Board under Section 10-K of the Act.

VI.

The injunction appealed from was issued to restrain a strike by appellants against the Machinists and Westinghouse for violation of Sections 8-a-1, 8-a-3, 8-b-1 and 8-b-2 of the Act constituting

Unfair Labor Practices under the Act, which excluded members of Appellants from employment; on the evidence the work stoppage is a result of the illegal closed shop contract; an unfair labor practice strike is protected union activity.

VII.

The injunction appealed from is couched in the language of the Act, is so vague and indefinite that it is impossible to ascertain therefrom what conduct is allowed and what conduct is forbidden, and is contrary to Rule 65(d).

VIII.

The injunction appealed from is broader than the dispute involved and decided by the Board, unnecessarily restricts the rights of the union members, compels them to work against their desires and prohibits their withholding their services.

IX.

The Act does not confer jurisdiction on the Board to hear and determine matters such as are presented in this case arising out of a building enterprise purely local in nature and not contributing to the flow of interstate commerce, and hence the District Court had no jurisdiction to entertain the petition.

X.

The Sixth Finding of Fact based on the Second Amended Charge erroneously supports the injunction with matters not considered by the Board or on which there has been a 10-K hearing.

XI.

The acts and conduct of the Respondents below justifying the issuance of the injunction are not found or specified in reasonable detail.

XII.

The injunction is not limited to proper pendente lite relief but finally determines the issues presented by the charges against the unions and grants full and final relief against them without trial.

XIII.

The injunction erroneously omits to preserve to the unions the rights guaranteed by Section 8-C of the Act in failing to exclude from its prohibitions acts which do not involve threats or reprisal or promises of benefit.

Respectfully submitted,

/s/ ARTHUR GARRETT,

Attorney for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 24, 1949.

[Title of Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF
RECORD FOR APPEAL

To the Clerk of the Above-Entitled Court:

Los Angeles Building and Construction Trades Council; its agent Lloyd A. Mashburn; Millwright and Machinery Erectors, Local 1607, of United Brotherhood of Carpenters and Joiners of America,

A.F.L.; and its agent Herman Barbaglia, appellants herein, herewith designate the following portions of the record and proceedings herein which they deem should be contained in the record on appeal of this cause in the United States Court of Appeals for the Ninth Circuit:

1. Petition for injunction, including Exhibits 1 to 8, inclusive, filed May 3, 1949.
2. Rule to show cause, filed and issued May 3, 1949.
3. Respondents' return to the rule to show cause, filed May 16, 1949.
4. Affidavit of Lloyd A. Mashburn in opposition to rule to show cause, including Exhibits A to E-2, inclusive.
5. Affidavit of Arthur Garrett, filed May 16, 1949.
6. Order on decision, filed May 26, 1949.
7. Opinion of court, filed May 26, 1949.
8. Respondents' memorandum in opposition to proposed findings of fact, conclusions of law, decree and temporary injunction.
9. Findings of fact and conclusions of law lodged May 31, 1949, and filed June 8, 1949.
10. Decree lodged May 31, 1949, and filed June 8, 1949.
11. Notice of Appeal.

12. Clerk's certificate.

The Clerk of the United States Court of Appeals for the Ninth Circuit is requested to print the above designated material as soon as practicable.

Dated this 19th day of October, 1949.

/s/ ARTHUR GARRETT,
Attorney for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 24, 1949.

[Title of Court of Appeals and Cause.]

COUNTER-DESIGNATION OF RECORD

Howard F. LeBaron, Regional Director of the Twenty-first Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, appellee herein, counter designates the following portions of the record herein which he deems should be contained in the printed record before this Court in the above-entitled proceedings in addition to those portions already designated for printing by the appellants:

1. Plaintiff's Exhibit No. 1 on hearing on order to show cause, which consists of a certified copy of the National Labor Relations Board Decision and Determination of Dispute in Case 21-CD-19, In the Matter of Los Angeles Building and Construction Trades Council et al.

2. Plaintiff's Exhibit No. 2 on hearing on order

to show cause, which is a document entitled “Affidavit of Jerome Smith.”

/s/ WINTHROP A. JOHNS,
Assistant General Counsel, National Labor Relations Board, Attorney for Appellee.

Dated at Washington, D. C., this 28th day of October, 1949.

[Endorsed]: Filed Nov. 2, 1949.
